

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
689 EATERY CORP., etc., *et ano.*, :

Plaintiffs, :

- against - :

Civil Action No.  
02 CV 4431 (LJL)

THE CITY OF NEW YORK, et al., :

Defendants. :

-----X  
59 MURRAY ENTERPRISES INC., etc., *et al.*, :

Plaintiffs, :

- against - :

Civil Action No.  
02 CV 4432 (LJL)

THE CITY OF NEW YORK, et al., :

Defendants. :

-----X  
CLUB AT 60<sup>TH</sup> STREET, INC., etc., *et al.*, :

Plaintiffs, :

- against - :

Civil Action No.  
02 CV 8333 (LJL)

THE CITY OF NEW YORK, :

Defendant. :

-----X  
336 LLC., etc., *et al.*, :

Plaintiffs, :

- against - :

Civil Action No.  
18 CV 3732 (LJL)

THE CITY OF NEW YORK, :

Defendant. :

-----X

**VOLUME 8 OF EXHIBITS TO  
JOINT REQUEST AND STIPULATIONS REGARDING  
THE TAKING OF JUDICIAL NOTICE**

JNR-001081

**EXHIBITS VOL. 8 of 10; pp. JNR-001083 – JNR-001351**  
**(Exhibits 54 - 59)**

		<b><u>Page(s)</u></b>
<u>Exhibit 54</u>	Relevant pages from transcripts of evidentiary hearing in State Action (Index No. 121197/2002) in Supreme Court, New York County, on February 23 through March 2, 2009	001083-001309
<u>Exhibit 55</u>	Excerpt from Respondents' Brief of City of New York, et al., filed in NY Court of Appeals re Index Nos. 113049/96, 103568/96 and 103569/96, dated December 11, 1997	001310-001313
<u>Exhibit 56</u>	Excerpts from September 3, 1996 deposition testimony of Marilyn Mammano, Director of Zoning & Urban Design of the NYC Department of City Planning, in State Action (Index No. 103569/96)	001314-001323
<u>Exhibit 57</u>	Maps (Reduced Size Versions) Generated by the DCP of Manhattan, Brooklyn, Bronx, Queens, and Staten Island, based on 1993-1995 data, indicating "Areas Where Adult Uses Would Continue to be Allowed Under the Proposal and Encumbered Property Within those Areas", filed State Actions (Index Nos. 103568/96 and 103569/96) as Exhibit RR to the Affidavit of Andrew S. Lynn, dated September 17, 1996	001324-001328
<u>Exhibit 58</u>	Maps generated by the DCP depicting the reduction in permissible areas for adult businesses based on Zoning Changes between 1995 and 2001, filed in State Action (Index No. 121080/02) on October 17, 2002, as Exhibit S to the Affidavit of David Karnovsky	001329-001343
<u>Exhibit 59</u>	Litigation Management Agreement dated September 25, 2017 (Exhibit B to March 2, 2018 letter from Plaintiffs to Hon. William Pauley)	001344-001351

## Transcript of Proceedings dated February 26, 2009 (Pages 448 Through 623)

2 SUPREME COURT OF THE STATE OF NEW YORK  
 3 NEW YORK COUNTY - CIVIL BRANCH - PART: 2  
 4 -----X  
 5 TEN'S CABARET, INC., f/k/a Stringfellow's  
 6 of New York, Ltd., PUSSYCAT LOUNGE, INC.,  
 7 d/b/a "Pussycat Lounge", CHURCH STREET  
 8 CAFE, INC., d/b/a "Baby Doll" and 69-20  
 9 QUEENS BLVD., INC., d/b/a "Nickels",  
 10 Plaintiffs,

11 -against-

INDEX NO.  
 121197/02

12 THE CITY OF NEW YORK, MAYOR MICHAEL  
 13 BLOOMBERG, as MAYOR, etc., et al,  
 14 Defendant.

15 -----X  
 16 71 Thomas Street  
 17 New York, New York  
 18 February 26, 2009

19 B E F O R E:

20 HONORABLE LOUIS B. YORK, Justice

21 A P P E A R A N C E S:

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 SHERYL NEUFELD, ESQ., and  
 RACHEL K. MOSTON, ESQ., of Counsel

ANGELA TOLAS, CSR  
 OFFICIAL COURT REPORTER

AT

**PGS. 2-185**  
**OMITTED**



1 EBT - Coppa

2 THE WITNESS: 10024.

3 COURT CLERK: Thank you. You may have a  
4 seat. The witness has been sworn.

5 THE COURT: Please inquire.

6 MS. BINDER: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MS. BINDER:

9 Q Mr. Iulo, until recently where were you  
10 employed?

11 A New York City Department of Buildings.

12 Q And have you left the Department of  
13 Buildings?

14 A Yes, I have.

15 Q Did you retire?

16 A Yes, I did.

17 Q Before we discuss your employment with the  
18 Department of Buildings, will you describe your higher  
19 educational background.

20 A I have a degree, a Masters Degree in urban  
21 planning from NYU.

22 Q What about undergraduate?

23 A Business degree, Pace.

24 Q From Pace did you say?

25 A Pace.

26 Q Now when did you start? When did you first

AT

1 Iulo - Direct - Binder

2 start working at the Department of Buildings?

3 A In 1992.

4 Q And when you started in 1992, what position  
5 did you hold?

6 A I was a construction inspector.

7 Q And what does a construction inspector do?

8 A Performs inspections as required for  
9 compliance with building code and zoning resolution.

10 Q And were you assigned to any particular  
11 department?

12 A Yes, I was assigned to the Mayor's office in  
13 midtown enforcement.

14 Q What is or was the Mayor's office of midtown  
15 enforcement?

16 A It as a group of different City agencies,  
17 inspectors and police. There were fire inspector,  
18 health inspector, construction inspector, police  
19 officers. And we would conduct inspections throughout  
20 the midtown area which was 14th Street to 16th Street,  
21 river to river.

22 Q And how long did you remain at the Office of  
23 Midtown Enforcement?

24 A Until 1998.

25 Q Now did there come a time to your knowledge  
26 where the City began to regulate the location of what

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2 are now called adult establishments?

3 A Yes, in 1998.

4 Q And what type of regulation?

5 THE COURT: Excuse me, you say you  
6 retired in 1998 from the Department of Buildings.

7 THE WITNESS: No, I retired last week.

8 THE COURT: Oh, but you were Midtown  
9 Enforcement until '98?

10 THE WITNESS: That's right.

11 THE COURT: I see, okay.

12 Q To clarify, when you were assigned to midtown  
13 enforcement, who was your employer?

14 A The City of New York, Department of  
15 Buildings.

16 Q And Midtown Enforcement was where you were  
17 assigned as a building Inspector working for the  
18 Department of Buildings?

19 A Yes, that's correct.

20 Q You testified that in 1998 the City began to  
21 regulate the location of what are now called adult  
22 establishments. What type of regulations were adopted?

23 A Adult establishments weren't permitted in  
24 certain zoning districts or within 500 feet of certain  
25 zoning districts or within 500 feet of one another or  
26 other sensitive receptors.

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2 Q Those were zoning regulations?

3 A Yes.

4 Q And when the City started to regulate adult  
5 establishments through zoning in 1998, were you still  
6 working out of the Mayor's office of Midtown  
7 Enforcement?

8 A No, early in 1998, I think it was March or  
9 April, I took a position at the Department of Buildings.  
10 So I was working at the Department of Buildings and no  
11 longer with the Mayor's office in Midtown Enforcement.

12 Q And what was that? What was that position?

13 A I was an Assistant to a Deputy Commissioner.

14 Q And did you have any responsibilities with  
15 respect to the City's efforts to regulate adult  
16 establishments through zoning in 1998?

17 A Yes, I did.

18 Q What were they?

19 A I directed, I trained and directed inspectors  
20 who would do inspections of adult establishments in the  
21 four boroughs outside of Manhattan.

22 Q So the inspectors at the Department of  
23 Buildings did they do the Manhattan inspections?

24 A No.

25 Q Who did the Manhattan inspections?

26 A Mayor's office, Midtown Enforcement.

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Q How many inspections did you oversee at the Department of Buildings?

A There were different inspectors at various times, but it was about 20.

Q And what was the period of time that you oversaw these inspectors doing inspections of adult establishments outside the Borough of Manhattan in the City?

A The original group of inspections when I had about 20 inspectors from our different borough offices that started in July of 1998 and it went on for about a year.

Q And what were your day to day responsibilities in terms of overseeing the inspectors during that year?

A What I would do would pass on addresses to them of where they had to do inspections. And when they returned I would look over their inspection reports and distribute those to different people.

Q Did you give them any training materials?

A Yes, I did.

Q What types of materials did you give them?

A Before I left the Mayor's office of Midtown Enforcement earlier, early in 1998, I wrote a manual which covered most of the zoning issues and how to issue

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2 a violation and that type of thing.

3 And I trained inspectors while I was at the office  
4 of Midtown Enforcement, I trained inspectors at the  
5 Department of Buildings, and then continued that  
6 training with other inspectors after I transferred to  
7 the Department of Buildings.

8 Q Okay, now you testified that this was a one  
9 year long thing from '98 to '99. Did DOB continue to  
10 inspect adult establishments after that one year period?

11 A Yes, at the beginning we sort of borrowed  
12 inspectors from our five borough offices to do this type  
13 of work. And after about a year for other reasons we  
14 formed a group, a centralized group of inspectors to  
15 handle certain special projects, and those inspectors  
16 continued the inspections.

17 Q And was inspecting adult establishments the  
18 only thing that this group of inspectors did?

19 A No, it was originally put together to inspect  
20 illegal advertising and business signs. And then they  
21 started doing the adult establishments because we  
22 already had them together essentially.

23 Q Was there anything else they did besides the  
24 things that you mentioned so far?

25 A About that time the Department of Buildings  
26 was mandated to inspect all public school buildings once

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2 a year, and they also hand handled that. And as time  
3 went on other things were added.

4 Q Did this unit have a name?

5 A The name was the special projects inspection  
6 team, SPIT.

7 Q And what was your role in connection with the  
8 SPIT unit?

9 A I was the manager of the unit.

10 Q And as the manager of the unit, what were  
11 your day to day responsibilities?

12 A To put together locations where they had to  
13 go and to go and do inspections, and then to look at the  
14 results of those inspections when they came back.

15 Q And did there come a time where you left  
16 SPIT?

17 A Yes.

18 Q When was that?

19 A Well, I didn't exactly leave SPIT. I got  
20 another position which included some other units and  
21 SPIT was part of it. And I continued with that work  
22 until June of '07.

23 Q And then in June of '07 you went on to  
24 another assignment at the Police Department?

25 A Yes, I did.

26 Q Now while you were employed at the buildings

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department, did there come a time in late 2008 when you were asked by the Corporation Counsel's office to conduct observations of certain cabarets offering topless entertainment in a portion of their premises?

A Yes, I did.

Q Were you asked to make observations at an establishment known as Lace 2 located at 689 Eighth Avenue?

A Yes, I did.

Q And did you visit Lace 2 for that purpose in 2008?

A Yes, I did.

Q How many times?

A Once.

Q And at what time of day did you make this visit?

A Late afternoon.

Q Did anyone accompany you?

A No.

Q And what was the duration of your visit to Lace 2 in 2008?

A It was about 45 minutes.

Q Had you ever been to Lace 2 before you made that visit?

A No.

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Q What did you do when you arrived at the premises?

A I went up to the front door and I asked for the manager. And when I met the manager I introduced myself as being with the Department of Buildings and said, "I'd like to take a look around." And we went in together, and walked throughout the establishment.

Q Were you escorted around by the manager?

A For most of the time, yes.

Q And while you were there, did you observe the layout of the establishment?

A Yes, I did. Upon entering there was a --

Q Let me stop you for a second Mr. Iulo. Did Lace 2 occupy more than one story?

A Yes, it did.

Q How many stories?

A Two stories.

Q Okay, so now would you please describe what you observed on the first floor of the establishment during your visit in 2008?

A At the entrance this was a coat check room. Just beyond that was a spiral stair going up to the second floor. And then there was sort of the back of a DJ booth in a wall. On the other side of that wall through the doors there was the entertainment area with

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2 a stage and tables and chairs and a bar.

2

3 Q Did you observe any activity on the stage?

3

4 A Yes, there was one topless dancer on the  
5 stage.

4

6 Q Did you observe any customers in the area?

6

7 A Yes, there were about six male customers.

7

8 Q And what were they doing?

8

9 A Sitting down drinking watching the  
10 entertainment.

9

11 Q Now did you observe the second floor?

11

12 A Yes, I did.

12

13 Q Would you please describe what you observed  
14 on the second floor of the establishment during the  
15 visit in 2008?

13

16 A At the front end of it there were windows  
17 overlooking Eighth Avenue. There were some couches, a  
18 pool table, and that was about it.

16

19 Q Did you observe any customers on the second  
20 floor of Lace 2?

19

21 A No, I didn't.

21

22 Q How long did you observe the second floor of  
23 Lace 2?

22

24 A About 45 minutes.

24

25 Q And from where did you do that?

25

26 A At the base of the spiral stairs.

26

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1 Iulo - Direct - Binder

2 THE COURT: What time of day was that?

3 THE WITNESS: I think it was about  
4 three, 4:00 o'clock.

5 Q All right, Mr. Iulo, I'm going to show you a  
6 document that's been premarked as Defendant's Exhibit  
7 N-1. Two exhibits, one is N-1 and one is N-2 premarked  
8 for Identification.

9 (Whereupon, Defendant's Exhibits N-1 and  
10 N-2 were marked for Identification at this time.)

11 Q Mr. Iulo, can you identify this document and  
12 what's depicted in the document? There are two  
13 different pages N-1 and N-2.

14 A N-1 and N-2, they are both photographs of the  
15 exterior of Lace 2.

16 Q And do these photographs fairly and  
17 accurately depict the exterior signs at Lace 2 on Eighth  
18 Avenue in 2008 when you visited there?

19 A Yes, they do.

20 MS. BINDER: We offer the photographs,  
21 your Honor, into evidence Exhibits N-1 and N-2.

22 THE COURT: Mark them in evidence.

23 MR. MURRAY: No objection.

24 (Whereupon, Defendant's Exhibits N-1 and  
25 N-2 were marked in Evidence at this time.)

26 Q Mr. Iulo, could you just read for us what the

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1 Iulo - Direct - Binder

2 Q Did anyone accompany you?

3 A No.

4 Q Had you been to Lace ever before before you  
5 made that visit?

6 A No.

7 Q And did you identify yourself as a Department  
8 of Buildings employee when you arrived at Lace?

9 A Yes, I did.

10 Q And were you escorted around?

11 A Yes, I was.

12 Q Did you observe the layout of the  
13 establishment during your visit?

14 A Yes.

15 Q Did Lace occupy more than one story?

16 A Yes, it did.

17 Q How many stories?

18 A Two.

19 Q Would you please describe what you observed  
20 on the first floor of the establishment when you visited  
21 in 2008?

22 A Walking in there was a coat check room in  
23 sort of a lounge area. Then there was a wall with doors  
24 in it leading to the entertainment area where there were  
25 tables and chairs and a stage. And also just next to  
26 the coat check area there is a stairway going up to the

AT

1 Iulo - Direct - Binder

2 second floor.

3 Q Did you observe any activity on the stage?

4 A Yes, there was one topless dancer.

5 Q Did you observe any customers in the area?

6 A Yes, there were eight male customers.

7 Q And what were they doing?

8 A Sitting down drinking, watching the dancer.

9 Q Did you also visit the second floor of Lace?

10 A Yes, I did.

11 Q And what did you observe on the second floor  
12 of Lace during your visit in 2008?

13 A There was couches and a pool table and some  
14 other things, but it looked like it was being  
15 redecorated, maybe being painted at the time.

16 Q What makes you think it was being  
17 redecorated?

18 A I saw paint cans and it looked a little bit  
19 upset.

20 Q Did you see anybody up there?

21 A No.

22 Q What was the duration of your visit to Lace  
23 in 2008?

24 A About 20 minutes.

25 Q And why didn't you stay longer?

26 A I saw it all in about 20 minutes.

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1 Iulo - Direct - Binder

2 Q Did you observe the signs on the exterior of  
3 the premises when you visited Lace in 2008?

4 A Yes.

5 Q What did the signs say?

6 A "Lace, a Gentlemen's Club."

7 Q Did you see the words "Sports Bar" on any  
8 exterior sign on Lace when you visited in 2008?

9 A No, I didn't.

10 MS. BINDER: We have no further  
11 questions.

12 THE COURT: Cross-examination?

13 MR. MURRAY: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. MURRAY:

16 Q Mr. Iulo, if I understand correctly you went  
17 into Lace on Seventh Avenue what time of day was that  
18 one?

19 A It was late in the afternoon, I think around  
20 four.

21 Q And you stayed there for around 20 minutes  
22 did you say?

23 A Right.

24 Q And you were able to observe the downstairs  
25 and the upstairs; is that correct?

26 A Yes.

AT

1 Iulo - Cross - Murray

2 A Correct.

3 Q And during the course of the time that you  
4 were there, you didn't see any actual sex acts such as  
5 intercourse, oral sex or masturbation, did you?

6 A No.

7 Q Now you indicated, sir, that -- oh, by the  
8 way, do you have N-1 and N-2 in front of you?

9 A Yes.

10 Q I just want to make sure that there is no  
11 confusion about N-2. Do you see directly underneath the  
12 part of the picture that has the awning there is some  
13 illuminated words on a storefront, do you see that?

14 A Yes.

15 Q That's next door?

16 A Ah ha, yes.

17 Q That's not part of this business, is it?

18 A No, it's not.

19 Q Now I think you testified on direct  
20 examination that you've got a Masters Degree?

21 A Yes.

22 Q And that's in urban planning?

23 A Yes.

24 Q And you got it at New York University I think  
25 you indicated?

26 A Yes.

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Iulo - Cross - Murray

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Q And, in fact, isn't it true that one of your interests that you pursued was the regulation of signs?

A Yes.

Q As a matter of fact you wrote a thesis for your Masters Degree entitled "Regulating aesthetics in commercial districts of New York City", did you not?

A That's true.

Q And that thesis dealt primarily with signs, business signs and advertising signs in New York City; correct?

A Correct.

Q As a matter of fact, you yourself had observed sign damage on the east side of town, particularly East 34th Street that was in compliance with zoning regulations and communicated a very nice aesthetic appeal; correct?

A Yes.

Q On the other hand when you went to the west side, you discovered that the signs were more plentiful and they were more garish and you found that they communicated an entirely different feel; correct?

A Correct.

Q And you also knew that back in 1994 you were familiar with the signs that existed for some of the adult eating and drinking establishments, were you not?

AT



1 Iulo - Cross - Murray

2 A Pardon me? Say that again.

3 Q Back in 1994, you observed the sign damage  
4 that was prevalent for some of the eating and drinking  
5 establishments that offered adult entertainment?

6 A Yes, that's correct.

7 Q And you knew and saw that those signs were  
8 loud and garish, would you agree with that  
9 characterization?

10 A In some cases, yes.

11 Q They had things communicated, messages like  
12 "Girls, Girls, Girls" there were signs like that;  
13 correct?

14 A Correct.

15 Q There were signs that said "Triple X" for  
16 example associated with these adult eating and drinking  
17 establishments back in those days?

18 A I think so, yes.

19 Q And, in fact, you learned as part of your  
20 duties in connection with the City, you were involved  
21 somewhat at the time that the zoning resolution  
22 regulating adult establishments occurred; correct?

23 A I'm sorry?

24 Q You were working for the City at the time the  
25 '95 ordinance that began to be enforced in '98 was  
26 originally adopted; correct?

AT

1 Iulo - Cross - Murray

2 A Yes, that's correct.

3 Q And you were familiar with some of the  
4 history that lead up to that ordinance as a consequence  
5 of your employment with the City?

6 A Yes.

7 Q And you knew for example that in the course  
8 of considering the adoption of that ordinance that there  
9 were citizens who testified in support of ordinances  
10 that if you could only just regulate the signs, nobody  
11 would care about what's going on inside; do you  
12 recall that?

13 MS. BINDER: Objection, your Honor.

14 THE COURT: Would you read the question  
15 back?

16 (Record read.)

17 THE COURT: It's a rather complicated  
18 question. Maybe you should rephrase it.

19 MR. MURRAY: I will, your Honor.

20 Q It's true, is it not, that around that  
21 timeframe when the original zoning resolution to  
22 regulate adult establishments was being considered, one  
23 of the complaints that citizens had was with respect to  
24 the sign damage; correct?

25 MS. BINDER: Objection, your Honor.

26 THE COURT: I'm going to have an offer

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1 Iulo - Cross - Murray

2 of proof. We'll do it on the record since there is  
3 no jury. Did you know that?

4 THE WITNESS: Yes.

5 THE COURT: How did you know that?

6 THE WITNESS: I followed it. It was in  
7 the papers.

8 THE COURT: All right. You can ask him  
9 the question provided you also ask him how he knew  
10 it.

11 MR. MURRAY: Sure.

12 Q You were aware that during this time period  
13 when the zoning resolution was being considered,  
14 citizens complained about the sign damage that was  
15 associated with adult establishments; correct?

16 A At least one, yes.

17 Q And how did you know that?

18 A I read it in the paper.

19 Q Now it is true, is it not, that the zoning  
20 resolution as passed in addition to the location  
21 requirements that you described on direct examination  
22 also had some sign damage regulations applicable to  
23 adult entertainment establishments; correct?

24 A That's correct.

25 Q And it is true, is it not, that since those  
26 sign regulations were adopted, you definitely noticed

AT

1 Iulo - Cross - Murray

2 that the sign damage for the adult eating and drinking  
3 establishments toned down quite a bit as a result of  
4 that; correct?

5 A No, not exactly.

6 Q Well, you did discover, did you not, that  
7 the -- well let me -- do you recall that you gave a  
8 deposition or an examination before trial in this case  
9 in October of 2007, do you not?

10 A Yes.

11 Q And you recall that you were placed under  
12 oath and that there was a Court Reporter there to record  
13 the questions and the answers; is that correct?

14 A Yes.

15 Q And you were asked a series of questions and  
16 you gave a series of answers; correct?

17 A Yes.

18 MR. MURRAY: Your Honor, I would like to  
19 mark for Identification and hand up to the witness  
20 as Plaintiff's Exhibit 13 his transcript.

21 THE COURT: Okay, 13 for Identification.

22 MS. BINDER: Why is it going to the  
23 witness? I don't understand. Objection, your  
24 Honor.

25 THE COURT: He wants to give it to the  
26 witness. You know you can give him anything.

AT

Iulo - Cross - Murray

Q Referring to page 181 of your deposition beginning at line seven. And just if you need to you can look at the preceding page for context, but I will tell you you were talking about the changes in the sign damage. Is it not true that you were asked this question?

THE COURT: What line?

Q Line 7 on page 181, is it not true that you were asked this question and you gave this answer under oath.

"To your knowledge, and you've been there since the beginning, have the eating and drinking establishments adhered to the changes?" And your answer was, "I think they have toned down quite a bit."

Was that your testimony, sir?

A Yes.

Q And that was true of course at the time that you gave that testimony?

A But what you asked me before was about the sign damage regulations.

THE COURT: There is no question pending.

A Okay.

Q Now, just so that we're clear, it's true that they toned it down quite a bit?

AT

1 Iulo - Cross - Murray

2 A Yes.

3 Q And, in fact, it was toned down to the point  
4 with respect to where quite a few of the eating and  
5 drinking establishments you wouldn't even know what it  
6 was from the outside; correct?

7 A Correct.

8 Q And you don't see any more signs like  
9 "Triple X" or "Girls, Girls, Girls" associated with  
10 these eating and drinking establishments; isn't that  
11 true?

12 A True.

13 MR. MURRAY: May I have one moment, your  
14 Honor?

15 THE COURT: Yes.

16 (Attorneys confer.)

17 MR. MURRAY: That's all I have. Thank  
18 you.

19 THE COURT: Redirect.

20 MS. BINDER: Thank you, your Honor.

21 REDIRECT EXAMINATION.

22 BY MS. BINDER:

23 Q Mr. Iulo, you were asked some questions about  
24 sign regulations for adult establishments.

25 Did those sign regulations apply to 60/40  
26 establishments? In other words you were asked,

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1 Iulo - Redirect - Binder

2 Mr. Murray asked you a question regarding whether as a  
3 result of sign regulations for adult establishments  
4 signs were toned down and you attempted to explain your  
5 answer. Would you explain your answer to us?

6 A The sign damage regulations were never  
7 enforced so they were toned down maybe for other  
8 reasons.

9 Q Okay, now the sign regulations, what did they  
10 apply to?

11 A They applied to adult establishments.

12 Q Now if a topless bar limits adult  
13 entertainment to less than 40 percent of its customer  
14 accessible floor area, is it considered an adult  
15 establishment under the '95 zoning regulations?

16 A No.

17 Q So would the sign regulations applicable to  
18 adult establishments apply to what's not considered an  
19 adult establishment under the '95 zoning regulations?

20 A No, they wouldn't.

21 Q Now you've testified that you saw the words  
22 "Girls, Girls, Girls" on signs during the '90's on  
23 topless bars; correct?

24 A Correct.

25 Q And you also testified that you saw the words  
26 "X X X", yes?

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1 Iulo - Redirect - Binder

2 A Correct.

3 Q Did you ever see a sign that contained the  
4 words "X X X" and "Girls, Girls, Girls" and "Topless"  
5 and "Adult" on the same establishment?

6 A Probably not all of that.

7 Q And, in fact, did you ever see a sign that  
8 said "Adult" on the outside of a topless bar in the  
9 '90's, the word "Adult"?

10 A I don't think so, no.

11 Q What about the word "Topless"?

12 A Topless, yes.

13 Q And what about the phrase "Open 24 hours"?

14 A I can't remember ever seeing anything like  
15 that.

16 MS. BINDER: We have nothing else, your  
17 Honor.

18 THE COURT: Okay.

19 MR. MURRAY: I have one recross, your  
20 Honor.

21 THE COURT: Go ahead.

22 MR. MURRAY: To the extent that the '95  
23 sign regulations did not and do not apply to the  
24 60/40 establishments, it would be true then that  
25 the toned down signage associated with those  
26 establishments would have been voluntary on their

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2 part; is that correct?

3 THE WITNESS: I suppose so.

4 THE COURT: You are excused, sir.

5 MS. BINDER: Wait a second, your Honor,  
6 I have one.

7 THE COURT: Re-redirect?

8 MS. BINDER: Just one question.

9 THE COURT: Go ahead.

10 MS. BINDER: Are there other sign  
11 regulations that apply to non adult establishments  
12 such as 60/40 clubs.

13 THE WITNESS: Yes, there are.

14 MS. BINDER: When were they adopted?

15 THE WITNESS: Since 1962.

16 MS. BINDER: Were they recently amended?

17 THE WITNESS: Sign regulations are  
18 regularly amended.

19 MS. BINDER: Do you know when the most  
20 recent amendment was?

21 THE WITNESS: No, I don't.

22 MS. BINDER: Okay, that's it, your  
23 Honor.

24 THE COURT: Anything?

25 MR. MURRAY: No, thank you, your Honor.

26 THE COURT: You are excused. Next

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**PGS. 214-306  
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Proceedings

THE COURT: What do we have today?

MR. MURRAY: Your Honor, you may recall the City was gracious enough to allow me to put a witness in out of order, so the plaintiff's are going to call Dr. Daniel Linz.

THE COURT: Okay.

D-R. D-A-N-I-E-L L-I-N-Z, called as a witness, having been first duly sworn, was examined and testifies as follows:

COURT CLERK: Please state your name.

THE WITNESS: Daniel G. Linz.

COURT CLERK: Spell your last name, please.

THE WITNESS: L-I-N-Z.

COURT CLERK: And your address?

THE WITNESS: 2107 Castillo C-A-S-T-I-L-L-O Santa Barbara, California, 93105.

COURT CLERK: Thank you. You may have a seat. The witness has been sworn.

THE COURT: You may sit down. Please inquire.

MR. MURRAY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MURRAY:

Q Dr. Linz, tell the Court what your current

AT

1 Dr. Linz - Direct - Murray

2 occupation is?

3 A I am a Professor at the University of  
4 California, Santa Barbara. I share a joint appointment  
5 between the law and society program and the Department  
6 of Communication where I specialize in the effects of  
7 sexual and violent entertainment on attitudes,  
8 predispositions, beliefs of those exposed to those  
9 messages.

10 Q And tell the Court what your educational  
11 background is?

12 A I received my Ph.D. at the University of  
13 Wisconsin, Madison.

14 THE COURT: In what?

15 A In psychology. Specialization in social  
16 psychology and law. I have a Masters Degree from the  
17 Sociology Department at the University of Business and a  
18 Ph.D. of the Psychology Department at the University of  
19 Business.

20 Q And tell the Court are you a full professor?

21 A Yes, I am.

22 Q And would you describe your work as a  
23 professor over the past ten, 12 years?

24 A Well, for the last ten years I've been  
25 primarily looking at the effects of, or the alleged  
26 affects of adult businesses in the community with regard

AT

1 Dr. Linz - Direct - Murray

2 to what has been termed adverse secondary effects.

3 Before that and continuously I investigate the  
4 effects of pornography on human behavior, the effects of  
5 violent depictions on human behavior and attitudes, and  
6 a variety of other fields that have to do with what I  
7 would call psychology and law, or communication and law.

8 Q And what courses do you teach?

9 A I teach a variety of courses. Currently for  
10 example at the undergraduate level I am teaching a  
11 course in communication law. I am teaching a course  
12 also on the effects of the exposure to sexually explicit  
13 material.

14 I also teach at the graduate level a course on  
15 methodological and statistical applications in the area  
16 of communication and communication law.

17 Q And do you supervise any graduate students?

18 A Yes, I do. Over the past, oh, how long have  
19 I been doing it, 25 years, I have probably supervised at  
20 least 20 or so either MA's or Ph.D. students.

21 Q Now, doctor, I want to hand up to you what  
22 has been marked for Identification as Plaintiff's  
23 Exhibit 5.

24 (Whereupon, Plaintiff's Exhibit 5 was  
25 marked for Identification at this time.)

26 Q Doctor, can you identify that document?

AT

1 Dr. Linz - Direct - Murray

2 A This is a copy of my curriculum vitae dated  
3 September 2007.

4 Q And does it accurately depict your  
5 experience, background and education at least as of  
6 September of '07?

7 A Yes, it does.

8 MR. MURRAY: Your Honor, I would move to  
9 admit Plaintiff's 5.

10 MS. BINDER: Your Honor, we object to  
11 that. It's hearsay.

12 THE COURT: It's not hearsay if he is  
13 here and he performed it.

14 MS. BINDER: He's here and he can  
15 testify about it.

16 THE COURT: That's a different story.

17 MS. BINDER: Something he wrote is  
18 hearsay.

19 THE COURT: No, it's not hearsay if he  
20 wrote it and he can be cross-examined to it. But I  
21 agree with you, he's here, he's already testified  
22 to most of his qualifications, and I don't think  
23 it's really necessary to put in the curriculum  
24 vitae.

25 MR. MURRAY: That's fine, your Honor.  
26 It was just a matter of convenience for the Court

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1 Dr. Linz - Direct - Murray

2 and the parties. All right, doctor, what I'd like  
3 you to now do --

4 THE COURT: Has it been marked for  
5 identification?

6 MR. MURRAY: It has, Judge.

7 Q Doctor, have you written any scholarly  
8 publications that have been published in the journals?

9 A Yes, many, actually probably in the area of  
10 about perhaps 85 published articles.

11 Q And can you tell the court what topics those  
12 published articles have covered?

13 A They have covered the topics of exposure to  
14 sexually explicit messages, and the effects of those  
15 messages on human behavior, attitudes and beliefs.  
16 Covered the topics of exposure to violence, violent  
17 television, sexual violence and its effects on human  
18 behavior, attitudes as well as beliefs.

19 And then more recently as I indicated the  
20 relationship between the presence of adult businesses in  
21 the community and adverse secondary effects primarily in  
22 the area of changes in or levels of crime that may be  
23 associated with or not associated with adult businesses.

24 Q What are some of the scholarly peer reviewed  
25 journals that these articles have appeared in? Can you  
26 identify some of the journals?

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1 Dr. Linz - Direct - Murray

2 A Yes, for example in 2001 an article appeared  
3 in which we had my graduate associate at the time and I  
4 had reviewed approximately 110 or 120 studies that had  
5 been undertaken by municipalities across the nation with  
6 regard to the alleged adverse secondary effects of adult  
7 businesses.

8 And then that's a study that was published in the  
9 communication law and policy journal which is a peer  
10 review journal in, if you may forgive me for not  
11 remembering exactly, but I think it was 2000.

12 Then beyond that in 2004 we published an article in  
13 the law and society review in which we examined the  
14 impact of adult businesses in North Carolina, in this  
15 case Charlotte Mecklenburg specifically the Charlotte  
16 area.

17 And that article as I mentioned was published in  
18 the law and society review in 2004 in which we found no  
19 association between presence of those businesses and  
20 adverse secondary affects in that community.

21 And then in 2000, forgive me for being a little  
22 sketchy here without it in front of me, but roughly 2006  
23 we published another article in the Journal of Sex  
24 Research which is also, as were the other two, peer  
25 reviewed journals in which we examined the impact of  
26 peepshows as they are known, or peepshow establishments

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1 Dr. Linz - Direct - Murray

2 as they are legally termed in San Diego, California.

3 And then most recently in 2008 as I recall we just  
4 recently published another article, peer reviewed  
5 journal in which we examined the impact of liquor  
6 serving adult establishments in four Ohio cities.

7 So over the course of ten years I suppose you can  
8 say I published on a fairly regular basis with regard to  
9 this question of adverse secondary effects.

10 Q And then the other 80 or so have they been --  
11 just identify a couple of the journals that have  
12 published, those other articles?

13 A I have published in the Journal of  
14 Personality and Social Psychology, as I mentioned also  
15 the Journal of Law, and it's called actually Law and  
16 Society Review.

17 The Communication Research, the Journal of  
18 Communication, Human Communication Research, these are  
19 all journal titles. The Public Opinion Quarterly.  
20 Those tend to be my primary outlets.

21 Q Now, have you yourself served as a journal  
22 referee for any scholarly journals?

23 A Yes, frequently I'm asked to referee. I'm  
24 currently reviewing a manuscript, for example, for the  
25 Journal Media Psychology.

26 Q Now, doctor, you said that there came a point

AT

1 Dr. Linz - Direct - Murray

2 in the last I think ten years or so where you began  
3 cultivating an interest in the question of adverse  
4 secondary effects of adult businesses?

5 A That's correct.

6 Q And can you tell the Court as part of your  
7 background and experience, have you yourself, not  
8 talking about this present case, done any studies of  
9 adverse secondary effects of adult businesses?

10 A Yes, I have.

11 Q And approximately how many studies have you  
12 yourself done?

13 A I would say in the neighborhood of 30 such  
14 empirical studies of the possibilities that adult  
15 businesses are associated with adverse secondary  
16 effects.

17 Q And approximately how many of those studies  
18 have been actually published in the journals?

19 A Well, in the journals that I mentioned that  
20 would be four, five of those studies.

21 Q Now, doctor, turning to the case that brings  
22 us to Court today, did there come a time when you  
23 undertook a secondary effects study of what are known as  
24 60/40 businesses in the City of New York?

25 A Yes.

26 Q And approximately when did you perform that

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1 Dr. Linz - Direct - Murray

2 study?

3 A We initially began to inquire of the Police  
4 Department about the possibility of obtaining crime  
5 information in August, 2001. And then after 9/11 it was  
6 difficult to resume our work, but we continued through  
7 2005 to obtain the data, and then eventually analysis  
8 and so forth undertaken more recently.

9 Q And when did you complete the study?

10 A The completion was approximately the early  
11 part of, the late part of 2006, early part of 2007.

12 Q What question did you actually study?

13 A Well, we had most broadly the question of  
14 whether or not adult businesses are associated with  
15 crime.

16 Q Which adult businesses?

17 A More specifically the 60/40 businesses. Now  
18 to use the term adult in this case may be a misnomer,  
19 but these were businesses that had some form of erotic  
20 communication, although as I understand the regulation  
21 it would be less than 40 percent of the business space  
22 devoted to that.

23 Q And so what were you asked to determine?

24 A We were asked to review the secondary effects  
25 studies that had been conducted by other municipalities  
26 and to determine if we could undertake a study that

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1 Dr. Linz - Direct - Murray

2 would allow us to scientifically determine whether or  
3 not there was a relationship between the presence of an  
4 adult business and police activity. In this case we  
5 chose to use calls for service as an index of that  
6 police activity.

7 Q Now you mention adults businesses again?

8 A I'm sorry, the 60/40 businesses; correct.

9 Q So your study was confined to 60/40  
10 businesses, this empirical study that you just  
11 mentioned?

12 A Yes, it was. We only examined 60/40  
13 businesses.

14 Q Did you use accepted methods in your field  
15 for studying that question?

16 A I feel confident that we did, yes.

17 Q Were you able to, and we'll get into it in  
18 more detail, but were you able to come to a conclusion  
19 as a result?

20 THE COURT: Before we get to that, what  
21 are the tools that you used to write your report?

22 A Well, we approach it from a three prong kind  
23 of approach. One, we identified the business in its  
24 location geographically.

25 And then within the census block and then the  
26 emanating census blocks from the business location we

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Dr. Linz - Direct - Murray

tabulate the number of calls for service to the police, and measured the extent to which proximity related to that business is associated with the calls to the police.

A second prong of our research involves what we might refer to as a hot spot analysis in which in the surrounding area from the adult business in the area immediately surrounding the adult business.

We look at the calls for service that have been made to the police attributable to certain addresses so that we may rank the adult business within that array of addresses under the theory that if it was a problem in that particular area it would rise to the top of those rankings.

And then a third methodology that we employ is a kind of before after approach whereby we look at some change into the opening of a business, a 60/40 business.

Or the closing of a 60/40 business under the theory that if one opened and there were adverse crime affects, we should see a spike in crime, and that may continue during the course of the opening.

Or as the business continues to operate, and conversely if a business closed and the theory of adverse effects was correct, we should see a decrease in crime.

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1 Dr. Linz - Direct - Murray

2 So those three methodology then are kind of a  
3 geographical approach where we look at crime emanating  
4 from a central location, in this case a 60/40 business,  
5 an approach whereby we look at the rankings or  
6 determination of whether or not the business is a hot  
7 spot for criminal activity, and then the third the kind  
8 of before after design that I mentioned.

9 THE COURT: When you talk about on  
10 opening whether there is a spike, that means you  
11 have figures for the level of crime in that area,  
12 you know, the area that you concluded emanates from  
13 that particular location, you have statistics on  
14 the crime before the establishment was opened?

15 THE WITNESS: That is correct.

16 THE COURT: Okay.

17 Q Doctor, I want to hand you what's been marked  
18 for identification plaintiff's Exhibit 6.

19 Now can you, doctor, and we'll get into this in  
20 more detail, but generally speaking can you identify  
21 what Plaintiff's Exhibit 6 is?

22 A Yes this is a copy of a report that we  
23 prepared April 14, 2005, entitled measuring the  
24 secondary effects of 60/40 businesses in New York City.  
25 A study of calls for service to the police by me, Daniel  
26 Linz, and Bryant Paul.

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1 Dr. Linz - Direct - Murray

2 MR. MURRAY: Your Honor, I should advise  
3 the Court that as you will see counsel and I have  
4 conferred and the result of that conference was  
5 while she may have other objections, we redacted  
6 pages five through part of page 16 after consulting  
7 with counsel and indicating that she would object  
8 to those pages and we had no problem redacting  
9 them.

10 THE COURT: Have they been redacted?

11 MR. MURRAY: Yes.

12 THE COURT: So I don't have copies of  
13 that in my copy, right?

14 MR. MURRAY: No, I think you'll see it  
15 goes from page four to 16 on your copy, I hope  
16 anyway.

17 THE COURT: What about page four?

18 MR. MURRAY: No, we included page four.  
19 We knew you, the City, would object to beginning on  
20 page five through part of 16 and so we took that  
21 out. She may have other objections, but we honored  
22 that particular objection.

23 Q Doctor, tell the Court whether Plaintiff's  
24 Exhibit 5 accurately reports the study that you did on  
25 the adverse secondary effects of 60/40 businesses in New  
26 York City?

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1 Dr. Linz - Direct - Murray

2 A It does.

3 Q Does it accurately describe the methodology  
4 that you used?

5 A Yes, sir. It does.

6 Q And does it accurately include the tables and  
7 the statistics that you used?

8 A Well, I have to say that there is -- well,  
9 the figures appear to be here. The tables are not.

10 THE COURT: Are there tables at the  
11 back? This is what I have among others.

12 THE WITNESS: Yes, I was referring to  
13 those, I have those also, your Honor, as figures.  
14 And then there are some separate tables, I believe.

15 THE COURT: Yeah, but you say there are  
16 some tables missing. Is that what you are saying?

17 MS. BINDER: They are all missing.

18 MR. MURRAY: I think in the redaction  
19 process we probably didn't include everything in  
20 that, we have them in the unredacted form.

21 MR. MEHLER: No, I don't.

22 MS. BINDER: I have an extra copy of  
23 just the tables. Would you like to borrow them,  
24 not the figures.

25 MR. MURRAY: I have it all. Why don't  
26 we mark this. I only have this copy. We'll make

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2 more copies later, your Honor.

3 THE COURT: Why don't we take back the  
4 other one.

5 MR. MURRAY: This is going to go in  
6 addition to it, this is the rest of it.

7 THE COURT: I see.

8 MR. MURRAY: We'll mark that 6A.

9 MS. BINDER: This is going to be 6A, but  
10 this is already part of six. You mentioned that it  
11 was Exhibit 5 a while ago.

12 MR. MURRAY: No, this is six.

13 THE COURT: No, the report is six.

14 MR. MURRAY: The CV is five.

15 MS. BINDER: Leave it all as 6A, I  
16 agree, that's fine.

17 THE COURT: Five was the curriculum  
18 vitae which was marked in for Identification.

19 MS. BINDER: I thought I heard  
20 Mr. Murray refer to this as Exhibit 5, but if he  
21 did it was a mistake.

22 (Whereupon, Plaintiff's Exhibits 6 and  
23 6A were marked for Identification at this time.)

24 BY MR. MURRAY:

25 Q Doctor, Plaintiff's Exhibit 6A is in front of  
26 you. And can you identify that as the remainder of what

AT

1 Dr. Linz - Direct - Murray

2 should have been included in Plaintiff's Exhibit 6?

3 A Yes, that is the remainder of the tables.

4 MR. MURRAY: And at this time, your  
5 Honor, and I will get into it in more detail, but  
6 at this time I would move to admit Plaintiff's  
7 Exhibit 6 and 6A.

8 MS. BINDER: Your Honor, we have no  
9 objection to 6A, but the 6A are the tables and the  
10 figures, but we object to 6 because 6 is his expert  
11 report and expert reports are inadmissible to  
12 bolster the actual expert testimony.

13 If you look at the beginning of it, your  
14 Honor, you'll see that it says our report statement  
15 as to what he did, and he is here to testify as to  
16 what he did.

17 And they say in plain English what his  
18 conclusions are, and he is here to testify as to  
19 what his conclusions are.

20 His report is inadmissible, expert  
21 reports are inadmissible to bolster the expert  
22 testimony. In fact, the CPLR doesn't even require  
23 expert reports need to be done in New York.

24 THE COURT: Whether they are required I  
25 have no knowledge of any case that says where the  
26 witness is on the stand and he establishes a

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2 foundation for his expert report by stating that  
3 the method that was used to obtain the information  
4 in the expert report, as far as I'm concerned he's  
5 established a valid foundation and it's admissible.

6 He's here to testify. The other side  
7 has the expert report in front of him and can  
8 cross-examine for that. That eliminates the  
9 hearsay objection. Overruled.

10 MS. BINDER: Your Honor, just let me  
11 just make my record, your Honor. I do have a case  
12 cite, the case is Borden versus Brady 92AD 2d 983.  
13 It's a Third Department case from 1983, and it says  
14 that the data that an expert relied upon is  
15 admissible, but the report itself is not  
16 admissible.

17 The report itself is hearsay, even  
18 though he is here to testify about it, he's  
19 testifying the report itself is his out of Court  
20 statement that is being offered for its truth. The  
21 report is hearsay, and he is here.

22 THE COURT: There are three foundations  
23 for a hearsay statement. One, and the most  
24 important is that the witness is not available in  
25 the courtroom to be cross-examined.

26 It's an out of Court statement offered

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2 for the truth of the consequences by a witness who  
3 created, by a witness who's not available for  
4 cross-examination. I'm not familiar with the Third  
5 Department case. At this point I'm marking it in  
6 evidence.

7 I will read that case, although I don't  
8 think its necessarily binding on me. Theoretically  
9 it's binding if there are no First Department cases  
10 on the issue. But if there are and they allow this  
11 kind of information in, then I think it's  
12 admissible.

13 So I'm going to, for the time being, I'm  
14 going to allow it into evidence. If it's not, I  
15 doubt if I am wrong, but if I am wrong I'll redact  
16 it.

17 MS. BINDER: Your Honor, just to let me  
18 finish making my record.

19 THE COURT: Go ahead.

20 MS. BINDER: It's the same thing as if a  
21 police officer comes to testify if he prepared a  
22 writing, a police report.

23 We can't introduce the police officer's  
24 report of what he said to bolster his testimony.  
25 The police officer is there, they are in Court, but  
26 the police officer can't, we can't use his police

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2 report to show that what he is saying is true.

3 THE COURT: I'm very familiar with those  
4 cases because they come up in tort cases all the  
5 time. And the point is that the things that were  
6 told to the police officer are not admissible  
7 because when he records them they are hearsay.

8 However, whatever the police officer was  
9 a witness to, whatever he saw or heard at the time  
10 that he was there is admissible. The other stuff  
11 is redacted.

12 The balance of the police report is in  
13 evidence. He's recording what the results are of  
14 his own examination. And like the police report  
15 his individual writings from his own knowledge are  
16 admissible.

17 MS. BINDER: Just one last point, your  
18 Honor, which is that I believe there are some  
19 hearsay statements in the report in addition to his  
20 own writings as to what he did.

21 THE COURT: That can be redacted.

22 MS. BINDER: Thank you.

23 MR. MURRAY: And, your Honor, just so  
24 that our record is complete, this is not just a  
25 report, it's an actual empirical study that was  
26 done.

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2 And everything the Court said is  
3 correct, but it's also an actual empirical study,  
4 not just some expert report.

5 This is a study of the kind that  
6 municipalities rely upon. For example many years  
7 ago when the case was tried, I'm sure the City  
8 introduced the empirical studies that it had,  
9 that's what this is.

10 (Whereupon, Plaintiff's Exhibit 6 and 6A  
11 were marked in Evidence at this time.)

12 BY MR. MURRAY:

13 Q Doctor, please explain to the Court, I know  
14 you began and gave some information on this subject in  
15 response to the Court's questions, but can you describe  
16 exactly the method that you used to test the question  
17 whether 60/40 businesses are associated with adverse  
18 secondary effects?

19 A Yes, if I may I'll start with the hypotheses  
20 that were generated. We had three hypotheses concerning  
21 the secondary effects of 60/40 businesses, or as the  
22 City termed it 60/40 eating drinking establishments in  
23 New York City.

24 We first of all speculated that if the 60/40  
25 businesses were associated with crime we should see a  
26 higher number of crime incidents in the immediate

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localized area surrounding the 60/40 businesses than would be the case as one moved further and further away from the area in which the 60/40 business was located.

If there was not an adverse secondary effect associated with the 60/40 eating drinking establishments, we would not see such a cluster of crime around the immediate vicinity of the 60/40 business.

Secondly we wondered whether or not the 60/40 businesses would range as I mentioned as hot spots in the area for criminal activity. And that relative to other addresses with the 60/40 establishments would rise to the level of being a top offender if you will with regard to adverse secondary effects.

And then thirdly we looked at the changes in the presence and absence of a business either opening or closing to determine if closing decreased the crime incidence and opening increased the crime interest in a kind of before and after design.

And I should mention that we also have a control there in that third phase whereby we not only look at opening and closing of the adult business and the crime events associated perhaps or the crime events as they occurred during that period, but then we used the other surrounding census blocks as controls to see if in general the area experiences the same kind of crime

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pattern.

Our theory being that if it looks identical to the broader area because crime tends to fluctuate over time, and in fact crime in New York City as many people have noted is actually going down, had been going down for each year particularly during our study period, we wanted to make sure that we didn't capitalize on that trend of going down and instead wanted to look at control areas as well.

That's known as a before after control group, a quasi experimental design. I'm sorry for the technicality there.

So then we were interested in those three ways of determining whether or not a 60/40 business was associated with calls for service to the police.

We then upon satisfying ourselves that that was the proper methodology having examined all of the secondary effects literature, I'm fairly confident it could possibly be found in the United States from communities across the country as well as whatever information could be gleaned from criminological articles and other studies of crime.

We applied what might be referred to in the first of the three approaches, what might be referred to as social disorganization theory which would say to us that

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2 there are a number of variables that need to be taken  
3 into account or controlled for in an analysis before we  
4 get to the point of establishing whether or not the  
5 adult business is responsible for the criminal, or  
6 excuse me the 60/40 business is responsible for the  
7 criminal activity.

8 So for example you have to control a number of  
9 demographic features in the vicinity of the business and  
10 beyond. And what's controlling for those these features  
11 we know as an area of social disorganization theory,  
12 once we control for those variables the last question we  
13 ask in our statistical model is does the proximity to  
14 the 60/40 business account for any of the variability in  
15 crime as it's reported to the police through calls for  
16 service.

17 That's the first of the three approaches. In the  
18 second we don't use those variables associated with the  
19 social disorganization theory.

20 Q What data did you obtain from the City of New  
21 York in order to do this analysis?

22 A Well, we obtained calls for service from the  
23 City for a period ranging from 19, the entire year of  
24 1998, to June of 2002. These calls for service ranged,  
25 as you would note for example in figure one from  
26 everything including firearms being present, knife

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2 fights occurring, shots being fired, down to a variety  
3 of mischief or other kinds of activities that the police  
4 are called for in an area surrounding the business in  
5 New York City.

6 Q And how did you obtain and where did you  
7 obtain from the list of the 60/40 businesses that you  
8 were studying?

9 A That was obtained from the City.

10 Q They had a list?

11 A Well, they had a list of 60/40 eating  
12 drinking establishments by address that was entitled  
13 "Adult Establishments 2000". And that was a report  
14 prepared March 26, 2001, it was a report to the City  
15 Planning Commission.

16 Q How much police data does that involve when  
17 you talk about calls for service for that period of  
18 time? What's the dimension of that?

19 A It's very large. It's over five million  
20 calls for service across that period of time. And we  
21 had to sift them down to the specific areas that we were  
22 interested in because obviously 60/40 businesses don't  
23 permeate all of the five boroughs. And we were only  
24 interested in that criminal activity that occurred  
25 within a relatively confined area around those  
26 businesses.

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2 Q Now you mentioned that you used calls for the  
3 service. What are calls for service, what does that  
4 mean?

5 A Well calls for service are part of the  
6 citizenry response to crime and crime activity as well  
7 as dispatches that may occur from the Police Department  
8 to a crime or an alleged crime or disturbing scene.

9 The citizen will often make a call, or a passerby  
10 may make a call concerning some disturbance, or a  
11 neighbor. Or in the case of the 60/40 businesses base  
12 they are located in neighborhoods that by my estimation  
13 having visited many of these places neighborhoods that  
14 are high in residential areas, my assumption is calls  
15 from this area would emanate from either passers by or  
16 neighbors in the immediate vicinity.

17 Q Now is that the only way to measure crime  
18 scientifically?

19 A There are many ways to measure crime. Each  
20 have their advantages and disadvantages.

21 Q What are the advantages and disadvantages of  
22 using calls for service in a study like this?

23 A Well, the advantage of using calls for  
24 service I think is three fold. One is it is the coin of  
25 the realm if you will with many of the other  
26 municipalities and police departments across the country

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2 when attempting to debate the secondary effects issue.

3 There are, if police are asked to testify before  
4 legislatures for example or before a city body or a city  
5 counsel, they'll often bring with them calls for service  
6 as a demonstration that a particular business or a  
7 particular area is problematic or not problematic in  
8 terms of crime.

9 The second reason that I favor calls for service  
10 and the criminologists do also is that they are kind of  
11 a raw unfiltered communication between the citizenry and  
12 the Police Department.

13 Very often if you are dealing with other indices of  
14 crime, it is the case that the police are able to  
15 manipulate that information in a variety of ways, not  
16 necessarily to be nefarious, but because for their  
17 record keeping it is necessary for them to eliminate  
18 certain things, respond to others and so forth.

19 So that UCR's for example another measure of crime,  
20 unified crime reports, because for example those are  
21 given to the federal government as a means of counting  
22 the amount of crime in a particular vicinity or state or  
23 county, there is a lot of filtering that goes on in that  
24 case. But I think the calls for service represent a  
25 direct citizen response to the police unfiltered.

26 And then the third reason that I think calls for

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2 service are particularly appropriate in this debate is  
3 because they tend to, there is a possibility of  
4 measuring community disorder and level of mischief if  
5 you will, or level of lesser crime that would not be  
6 reflected in the more narrow, the measurements of crime  
7 covered for example by the uniformed crime reports.

8 Q Have you used both forms in some of your  
9 studies?

10 A Yes, I would like to use all forms all of the  
11 time, but of course time and money preclude that. And  
12 these were the data that I felt were most appropriate  
13 given what has transpired in the debate about secondary  
14 effects across the country.

15 Q Now, explain to the Court then what you did  
16 with this data in connection with the first test that  
17 you identified which was asking whether crime in  
18 proximity to these businesses was higher or lower, how  
19 did you do that?

20 A Well, maybe the best thing to do if I may is  
21 refer you to a figure, which starts with a picture. And  
22 that is figure two. And this will illustrate how we  
23 make this approach. And in figure two -- am I allowed  
24 to unsnap these? I don't want to lose them.

25 In figure two for example we have located right  
26 here New York Dolls. And now then we have also located

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2 the streets and the census blocks associated with the  
3 area surrounding New York Dolls.

4 Now each of these dots represent a call or calls to  
5 the police for a particular kind of disturbance or  
6 crime. Our method is one of counting all of those calls  
7 for service, and then in effect establishing a one for  
8 the proximity that is the census block that New York  
9 Dolls is located in; two for every census block that  
10 touches this middle block, an area that we call three  
11 labeled as number three out here, and an area called  
12 number four which is labeled in the periphery here.

13 Now it would be very nice to be able to say that we  
14 just want to look at the correlation between being close  
15 or further away from New York Dolls. But we know other  
16 features are associated with crime in an area, so we  
17 have to take those variables into account, in effect  
18 control for them, and then add the variable that says  
19 are you one, two, three or four from your distance from  
20 the 60/40 business or New York Dolls in this case.

21 And so the first analysis is something called a  
22 regression analysis in which we first take the number of  
23 crimes that we have been able to count in the area, and  
24 regress those on a series of variables that we know  
25 through social disorganization theory are important ones  
26 for understanding crime in a particular area.

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2 There I might refer you then to if I may another  
3 table which would be table two. And in table two this  
4 is entitled Regression Analysis for Crimes against  
5 Person using all 60/40 businesses in New York.

6 Now you might look at this New York Dolls as an  
7 example, we didn't produce a figure for every one of the  
8 businesses. But we did, we undertook the same  
9 methodology for each of the businesses.

10 And then we introduced, put some variables we knew  
11 were important for determining whether or not crime was  
12 present or could account for the probability of crime in  
13 a particular area. Knowing that there are males age  
14 roughly 18 and over for example in the area by the  
15 census count is important.

16 I should mention here that what we're able to do  
17 with our program is meld the geographic information that  
18 tells us the location of each of these crimes with  
19 social demographic information.

20 So that in the same file for a particular block  
21 group we will know that there is one, two, three, four,  
22 five, six, seven, eight, nine, 10, 11, 12, 13, 14, so  
23 forth crimes.

24 But we also know how many males age 18 and over are  
25 in the particular block group, we know the composition  
26 of the block group with regard to ethnicity, we know the

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2 composition of the block group with regard to whether or  
3 not households are headed by families or non family  
4 occupants in the household, and then finally once we  
5 control for those which we know are important predictors  
6 of crime we say what is the impact of being two, three  
7 or four blocks away from the 60/40 business.

8 So that's put in what's called a statistical  
9 regression where first we enter the variables associated  
10 with crime, and then once they explain what they can  
11 with regard to the distribution of the crimes in the  
12 block groups, we in effect ask what's left over for  
13 proximity to the adult business to explain in terms of  
14 our crime count.

15 And what we find that uniformly there is a trivial  
16 or non significant amount of variability in crime  
17 explained by proximity to the business compared to these  
18 other variables that I was speaking of. So that's the  
19 first way that we attempt to understand whether or not  
20 there is a crime or secondary effects associated with  
21 the closeness or distance from large or small distance  
22 from the 60/40 business.

23 Q And can you just then enunciate what were the  
24 results of that first analysis with respect to that  
25 question of whether the adverse secondary effects are  
26 associated with 60/40 businesses?

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2 A Using the regression method we found no  
3 evidence of adverse secondary crime effects associated  
4 with the adult, with the 60/40 businesses.

5 Q Now you then mentioned that you did the hot  
6 spot analysis. Would you please explain in a little  
7 more detail to the Court what that involved?

8 A Yes, and here I might also refer you to a set  
9 of tables since we're going with Baby Doll I'll refer  
10 you to the Baby Doll Lounge which is labeled as such.  
11 And what we attempted to do there then was to count up  
12 if you will the frequency of crime in the immediate  
13 vicinity surrounding -- I'm sorry, this is Baby Doll  
14 Lounge and New York Dolls, I'm sorry, too many dolls  
15 here. Excuse me, New York Dolls.

16 The first procedure is to look at the calls for  
17 service that occur in the area, and so that we find for  
18 example that 180 calls for service for crimes against  
19 persons occur within the immediate vicinity of New York  
20 Dolls. And then with the calls for service were the  
21 police to attach an address to that call, that's either  
22 provided by the person who is calling in or was provided  
23 by the police once they arrive at the location.

24 Then we range those addresses according to most  
25 frequent calls for service to the police. New York  
26 Dolls is at 59 Murray Street for example and over the

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2 course of our five year study period they received to  
3 their address five calls for service to the police.  
4 That makes them in their immediate vicinity ranged  
5 number 16 in terms of being a crime problem compared to  
6 other addresses.

7 The most frequent address being for example the  
8 intersection of Warren Street and Church Street which  
9 had a frequency of 19 calls for service. So in each  
10 case for each of these 60/40 businesses we were able to  
11 range them relative to other addresses in the  
12 neighborhood with regard to the number per of calls for  
13 service to the police across these various categories,  
14 one of which I just mentioned, crimes against persons.  
15 We did the same for crimes involving property and a  
16 variety of other forms of crime as well.

17 Now this has been referred to as a hot spot  
18 analysis by which the police are able to identify those  
19 addresses in a particular locality that may be hot spots  
20 for crime. And then relative to that, those hot spots  
21 we're able to identify where the 60/40 business falls.

22 Q And what was the result of doing that hot  
23 spot analysis of the 60/40 businesses?

24 A The 60/40 businesses never reached a level of  
25 calls for service to the police that would be described  
26 as sufficient to call them in any sense of the word a

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2 hot spot for crime. In fact, many of the 60/40  
3 businesses fell off the chart. They had so few calls  
4 for service that they didn't even range among the top 20  
5 or 25 addresses in that relatively small locale that  
6 comes to the attention of the police.

7 Q And then tell the Court about the third  
8 method that you used in a little bit more detail?

9 A Well, the third method is slightly more  
10 complicated in that we attempt to take those businesses  
11 for which we knew something had changed between 1998 and  
12 2002.

13 So for example Billy's Topless as it was known on  
14 729 Avenue of the Americas changed during our course of  
15 study and was no longer topless in '01. Club 44 was at  
16 689 Eighth Avenue opened in October of 2001.  
17 Gallagher's and Gallagher's 2000, Gallagher's closed in  
18 mid 2000 and then at a new address Gallagher's 2000  
19 opened at the end of 2000.

20 The Cozy Cabin and other addresses either opened or  
21 closed during the study period. And when that happens  
22 that allows us to take advantage of these openings and  
23 closing as kind of a natural experiment in the area.

24 Now because we can't really randomly assign  
25 neighborhoods to having a 60/40 club or not, it's not a  
26 true experiment, so this funny word is used quasi

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experiment to describe the methodology. But it does allow for a natural occurrence that we can take advantage of and study.

Now if the secondary effects theory that the City is proposing is correct and the 60/40 businesses are a problem, we should see crime increase after the 60/40 business opens or crime decrease according to on the City's theory once the 60/40 business closes.

Now one way to examine the results of this is to take an example I think this copy is probably better because it's in color. We'll just take Gallagher's for example which opened in 2000 opened for business in 2000 as a 60/40 business.

Gallagher's is represented by the blue diamond. And if you follow Gallagher's that the pattern of crime activity in the blocks surrounding in the area surrounding Gallagher's, and then in the areas as you move further and further away from Gallagher's which we use as a control or series of control areas, you see that Gallagher's number of incidents hovers around four for '98, probably three for '99, in 2000 when the business is about to open pops up, as do a number of others, to ten, but then once the business is open in 2001 and 2002 drops to four incidents, and then in a similar pattern with the rest of the surrounding area

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2 pops back up to about six incidents.

3 So in each case we trace across our five year  
4 period the crime incidents that can be on average or can  
5 be attributed to, not on average but attributed to the  
6 block either immediately present where Gallagher's is  
7 immediately present upon opening, and then the  
8 surrounding blocks.

9 And we find that the pattern around Gallagher's is  
10 very similar to the pattern for the surrounding blocks.  
11 Further, there is no indication once Gallagher's opens  
12 that crime increases. In the case of Gallagher's for  
13 example crime decreases calls for service of police  
14 decrease after the opening of that 60/40 business.

15 Q And can you summarize what the results were  
16 for the other openings and closings that without  
17 identifying each one?

18 A Yes, in general we found the same pattern of  
19 results for all of those 60/40 businesses that had  
20 experienced the kind of change that I am referring to,  
21 either in the opening or the closing. No evidence of  
22 crime increasing after the opening of such a 60/40  
23 business, no evidence of crime decreasing after the  
24 closure of such business.

25 Q So can you summarize then taking into account  
26 the totality of your study in all three of it's

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2 dimensions what the results were?

3 A Yes. I conclude as a result of the three  
4 methodology that we employed that the 60/40 businesses  
5 are not associated with adverse secondary effects in the  
6 form of calls for service to the police. And that this  
7 cast a fairly substantial amount of doubt on the City's  
8 theory that such businesses are associated with these  
9 kinds of crime effects.

10 Q And do you hold those opinions to a  
11 reasonable degree of scientific certainty?

12 A I do.

13 Q Now, doctor, in addition to the study that  
14 you performed, did you visit any of the 60/40 clubs  
15 during the course of your work?

16 A Oh, yes, I have.

17 Q And on how many occasions approximately did  
18 you visit?

19 A Well, I visited New York City at least two  
20 times prior to my current visit in which I investigated  
21 the 60/40 businesses. And then in the current visit I  
22 spent the last two days visiting the 60/40 businesses.  
23 One in Queens and the remainder in the Manhattan area.

24 Q And did you visit in the last two days any of  
25 the hundred percent clubs?

26 A Yes, I did.

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2 And then Dr. Linz came to my office last  
3 summer and I deposed him about what was in his  
4 report, but obviously not what he did this week.  
5 It's too late for him to go and make observations  
6 this week and testify about them now.

7 He was here years ago, a number of years  
8 he's been working on this. He could have looked at  
9 the hundred percent clubs and made his comparison  
10 of the hundred percent club and 60/40 club before,  
11 and it could have been put in a disclosure to us  
12 and I would have had an opportunity to depose him  
13 about it.

14 It's too late for him to go out and do  
15 field work the week of the trial, your Honor.

16 MR. MURRAY: Mr. Mehler sent a letter to  
17 the City.

18 MR. MEHLER: Ten days ago.

19 MR. MURRAY: Ten days, two weeks ago,  
20 explaining that he was going to revisit the 60/40  
21 clubs for purposes of his testimony and he was  
22 going to visit a hundred percent clubs.

23 MS. BINDER: I don't have a letter. We  
24 don't have that letter, your Honor. Let me see it.  
25 I don't have it, honestly, I don't have a letter.  
26 And even so I wouldn't have had an opportunity to

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2 Q And which hundred percent clubs did you visit  
3 in the area? Did you visit Hustler?

4 A Yes. I'm sorry, Mr. Murray, I was responding  
5 to you.

6 MS. BINDER: Thank you. Your Honor, I  
7 have an objection to the line of inquiry for two  
8 reasons. The first is that we had discovery as to  
9 what professor or Dr. Linz was going to testify  
10 about. And we had his report and we took his  
11 deposition and we questioned him about what he  
12 visited.

13 And we did not have an opportunity  
14 obviously to examine him about what he just did  
15 this week. In addition, we have what we have, the  
16 report which was given to us in lieu of a 3101D  
17 disclosure and the 3101D disclosure obviously  
18 didn't include what Dr. Linz looked at this week.

19 THE COURT: You don't have a 3101D  
20 disclosure, is that what you are saying?

21 MS. BINDER: We never had a 3101D  
22 disclosure as to this aspect of the testimony, what  
23 he did this week. We got a 3101D disclosure, we  
24 got this report that's in evidence as Exhibit 6 and  
25 6A in lieu of a 3101D disclosure, but the report  
26 was prepared in 2005.

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2 depose him about it, but no we did not get a  
3 letter.

4 THE COURT: Well, I'm not going to couch  
5 my decision on whether or not the witness could be  
6 deposed because obviously in New York the  
7 depositions are conducted on consent because you  
8 don't have a right to depose an expert witness.

9 However, they were entitled to some  
10 advanced, reasonably advanced information regarding  
11 the result of his study. If they didn't get it, I  
12 think it would be very unfair to hoist that upon  
13 them at this last minute.

14 MS. BINDER: Even if Mr. Mehler sent us  
15 a letter saying Dr. Linz was going to go out and do  
16 this, we wouldn't have had the results of what Dr.  
17 Linz determined, but we don't have even a letter.

18 MR. MURRAY: Your Honor, I view this  
19 more as fact testimony. This is not expert  
20 testimony what we're eliciting. We're just  
21 eliciting testimony about observations by what is  
22 now a fact witness.

23 It doesn't, as the City has pointed out  
24 time and time again, it doesn't require you to be  
25 an expert to describe what you saw when you went  
26 into an establishment. So I don't know why we

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2 can't ask him what he saw when he visited  
3 particular establishments as a fact witness.

4 THE COURT: You're entitled to depose  
5 fact witnesses too.

6 MS. BINDER: That would have been my  
7 point, your Honor. If he was a fact witness he  
8 would have had to have been identified to us as a  
9 fact witness and we would have had an opportunity  
10 as of right to depose him on the fact witness  
11 portion of his testimony.

12 In fact, in the companion case the  
13 People Theater case, the expert in that case was  
14 identified both as a fact witness and as an expert  
15 witness. And we would have at least as of right  
16 the opportunity to depose the expert as a fact  
17 witness even if we hadn't agreed as to the expert  
18 testimony as to the deposition about the expert  
19 testimony.

20 MR. MURRAY: Your Honor, we're perfectly  
21 willing to make him available for a deposition  
22 after Court today. And then resume his testimony  
23 after they have had an full opportunity if that's  
24 what they want to do. We have no objection to  
25 that.

26 I can't speak for Mr. Mehler, but I saw

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2 the email that he sent to the City and ten days ago  
3 at least explaining that he was going to make these  
4 visits for the purposes of preparing for his  
5 testimony.

6 And I can't explain why the City might  
7 not have received that. But if they want to know,  
8 we'll be glad to make him available later today.  
9 It won't take him more than ten minutes to explain  
10 to them what he did, and he can answer whatever  
11 questions they have, your Honor, and we'll bring  
12 him back to finish this part of the testimony.

13 MS. BINDER: If you call him a fact  
14 witness as to this it's too late. We sent our  
15 inspectors out in the fall and we had an agreement,  
16 and it was in the note of issue that if anybody  
17 went to inspect anything they were available for  
18 deposition up to 30 days before trial.

19 And we produced our people for their  
20 2008 observations so that they could be deposed.  
21 If it's a belated 3101D disclosure, we have lots of  
22 case law that 3101D disclosure on the eve of trial  
23 are not accepted unless they can show that they  
24 have some kind of good cause for the belated 3101D  
25 disclosure.

26 And it looks like Mr. Murray thought of

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2 this line of inquiry when he was preparing and he  
3 decided to quickly send his witness out to do some  
4 kind of investigation and come back and do this  
5 kind of inquiry without the City having any notice  
6 about it. It isn't fair, and it isn't permitted by  
7 the CPLR.

8 MR. MURRAY: They were given notice.

9 THE COURT: They weren't given the  
10 information that they are entitled to prior to the  
11 trial.

12 MR. MEHLER: Could I gain access to a  
13 computer for about two seconds and I can show that  
14 the--

15 THE COURT: Can you give him access?

16 COURT CLERK: I don't have it.

17 THE COURT: The point is that as I said  
18 before even though you gave them notice that you  
19 were going to conduct this, that your witness was  
20 going to conduct this investigation, they had a  
21 right to see that, the results of that in advance,  
22 at least some sort of supplemental bill or  
23 something like that to tell them what additional  
24 testimony that was not in his report he's going to  
25 testify to.

26 MR. MEHLER: My letter indicated that he

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2 was going to be coming in, that if they wanted to  
3 depose him we had no objection to.

4 MS. BINDER: We never saw a letter like  
5 that, your Honor. Obviously we never saw a letter  
6 like that.

7 MR. MURRAY: I don't know why they  
8 didn't see the letter.

9 THE COURT: I'd like to see what was in  
10 the letter since there is some dispute as to what  
11 is in the letter.

12 MR. MEHLER: I'm literally five minutes  
13 away. I can go get it.

14 MS. BINDER: If it was emailed to me I  
15 can search my BlackBerry.

16 THE COURT: Let's take a break now while  
17 you do that.

18 (Brief recess.)

19 THE COURT: Doctor, you can come back  
20 up. Back on the record.

21 MR. MURRAY: We are at the point, your  
22 Honor, where as I said we would be happy to make  
23 Dr. Linz available for a deposition after Court  
24 today, and we would ask the opportunity to do that  
25 so that following that deposition the City could  
26 then determine whether it would continue to object

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2 to this testimony.

3 THE COURT: Denied.

4 MR. MURRAY: I have no other questions  
5 then.

6 THE COURT: Okay, cross-examination.

7 MS. BINDER: Yes. Your Honor, I'm ready  
8 to do my cross-examination, but we're just trying  
9 to figure out if we should have another witness  
10 before lunch because we could have the officer come  
11 over here or we could break before Dr. Linz.

12 THE COURT: I think we should break.  
13 The officer can come in this afternoon.

14 MS. BINDER: We just didn't know when to  
15 call him.

16 THE COURT: We'll break after the  
17 testimony.

18 MS. BINDER: Okay.

19 THE COURT: Go ahead.

20 CROSS-EXAMINATION

21 BY MS. BINDER:

22 Q Dr. Linz, nice to see you again.

23 A Good to see you.

24 Q Dr. Linz, you are familiar with the term  
25 60/40 club as it's used in New York City; correct?

26 A Yes, I am.

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2 Q And what does it mean?

3 A Well, I understand it means 60/40 eating  
4 drinking establishment is the official terminology. And  
5 to my understanding 39.99 percent of the business  
6 activity may feature erotic, or floor space may feature  
7 erotic entertainment. The other sixty percent must be  
8 devoted to a nonerotic use.

9 Q And it's your understanding that the 60/40  
10 clubs in New York City adopted a 60/40 configuration in  
11 order to comply with zoning requirements that regulate  
12 adult use; correct?

13 A That's my understanding, yes.

14 Q And it's true, isn't it, that you were  
15 retained by the plaintiffs in this case to give expert  
16 testimony on the issue of whether 60/40 clubs in New  
17 York City cause crime?

18 A That's correct.

19 Q And by the way, you don't consider yourself  
20 to be a criminologist, do you?

21 A No, I am not trained as a criminologist.

22 Q Now you first looked at this issue in  
23 connection with a federal case that was filed on behalf  
24 of a club called Lace and a few other 60/40 clubs; isn't  
25 that true?

26 A As best as I can recall. The legal

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2 interested in adverse secondary effects. If it got to a  
3 court case or not, I'd have to check. Some cases they  
4 do, some cases they are settled.

5 Q But you did about five cases involving  
6 obscenity charges; correct?

7 A Yes, that's correct.

8 Q And so the other 45 or so cases, or maybe  
9 it's not the exact number, involved government  
10 regulation of sexually oriented businesses through  
11 either zoning or public nudity ordinances; correct?

12 A That's correct.

13 Q And you were retained as an expert on behalf  
14 of one or more sexually oriented businesses that were  
15 subject to these regulations?

16 A That is correct.

17 Q And you testified at trial in at least ten of  
18 those cases; isn't that right?

19 A That's correct, ma'am.

20 Q And your testimony in each of those cases was  
21 that the regulated sexually oriented businesses didn't  
22 cause crime or other negative secondary effects;  
23 correct?

24 A That's correct.

25 Q And you testified on direct that you've  
26 conducted in the neighborhood of 30 studies on the issue

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2 proceedings have been rather complicated and confusing  
3 to me, but that is the case.

4 Q But you were retained first for another case  
5 before this one?

6 A As I understand it, yes.

7 Q And that was back in 2002 or maybe I think  
8 you testified?

9 A I think it was actually before 9/11. So it  
10 was in the -- I think it was actually June of 2001 when  
11 I was initially contacted.

12 Q So that was shortly before the City of New  
13 York amended its zoning regulations to change the  
14 definition of adult eating or drinking establishments so  
15 as to cover 60/40 clubs; correct?

16 A Yes, I think that was in anticipation of that  
17 occurring.

18 Q And, in fact, the owner of Lace consulted you  
19 in connection with that zoning change before it was  
20 enacted?

21 A If that would be -- that is correct.

22 Q And it's true that you have previously been  
23 retained as an expert witness for approximately 50  
24 different court cases; correct?

25 A It's hard to say if it is fifty different  
26 Court cases, but certainly fifty different individuals

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2 of whether sexually oriented businesses cause negative  
3 secondary effects; correct?

4 A That's correct.

5 Q Now isn't it true that you've never found a  
6 statistically significant secondary effect associated  
7 with a sexually oriented business?

8 A That is incorrect.

9 Q How many times have you found a statistical--

10 A Well, we have to make a distinction about  
11 what is important and what might be technically  
12 statistically significant.

13 Q Have you ever found an important secondary  
14 effect associated with a sexually oriented business?

15 A No.

16 Q Now it's also true that you take issue with  
17 the studies conducted by many state and local  
18 governments that have reached the conclusion that  
19 sexually oriented businesses do cause negative secondary  
20 effects?

21 MR. MURRAY: Your Honor, I'm going to  
22 object. The City throughout these proceedings has  
23 taken the position that studies that generally do  
24 or don't establish that businesses cause adverse  
25 secondary effects is irrelevant. In fact, that's  
26 what we redacted.

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2 THE COURT: I'm entertaining argument on  
3 it. I said I'm open without making a decision on  
4 whether it's relevant or not that I will allow the  
5 evidence in.

6 MR. MURRAY: I'll withdraw the  
7 objection, your Honor.

8 MS. BINDER: Can we have the question  
9 read back?

10 (Record read.)

11 A That's correct with one caveat, many of the  
12 studies themselves conclude that there are no adverse  
13 secondary effects.

14 Q I'm talking about the ones that do cause  
15 secondary effects. You take issue with those; correct?

16 A Yes, I do.

17 Q And that's true of businesses that devote a  
18 hundred percent of their establishment to the adult  
19 entertainment; correct?

20 A That's correct.

21 Q Studies of those kinds of businesses not just  
22 60/40 businesses; correct?

23 A That's correct.

24 Q And, in fact, you coauthored an article in  
25 2001 entitled "Government Regulation of Adult Businesses  
26 Through Zoning and Antinudity Ordinances Debunking the

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2 Legal Myth of Negative Secondary Effects"; correct?

3 A I will assume that is correct because I do  
4 not have my vitae before me.

5 THE COURT: You didn't have your what?

6 A I do not have me vitae before me.

7 Q Would you like to see a copy of the article  
8 to refresh your recollection as to what it is called?

9 A Yes, please.

10 MS. BINDER: Your Honor, I assume we  
11 need to mark this. We have it premarked as  
12 Defendant's Exhibit PP.

13 (Whereupon, Defendant's Exhibit PP was  
14 marked for Identification at this time.)

15 Q Dr. Linz, take a look at what I've shown you  
16 and ask you if it refreshes your recollection as to the  
17 title of the article that you coauthored in 2001?

18 A Yes, this is the article.

19 Q You can put it down. The officer will get  
20 it. So you coauthored an article entitled, "Government  
21 Regulation of Adult Businesses through Zoning and  
22 Antinudity Ordinances Debunking the Legal Myth of  
23 Secondary Effects"?

24 A Yes, I have.

25 Q It's true, isn't it, in your opinion some of  
26 the studies relied upon by local governments to

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2 establish secondary effects didn't adhere to the  
3 professional standards of scientific inquiry, did not?

4 A Did not.

5 Q In your opinion, the studies relied upon by  
6 local governments, some of them did not adhere to the  
7 professional standards of certificate inquiry?

8 A That's correct.

9 Q And it's true, isn't it, that one example of  
10 the poor methodology used in many of the government  
11 studies is the use of opinion surveys instead of  
12 statistical data to identify secondary effects?

13 A Well, you'd have to make a distinction there  
14 between opinion surveys that are generally taken in  
15 order to establish real estate value effects, and  
16 opinion surveys that are taken in order to establish  
17 crime victimization. I am not critical of crime  
18 victimization methods for obtaining information about  
19 crime in an area.

20 Q But you are critical of neighborhood surveys  
21 regarding real estate values in a neighborhood?

22 A I'm critical of the studies that have  
23 generally been conducted because they have a number of  
24 methodological problems. And then I further criticize  
25 the notion that one can obtain property value  
26 estimations by a survey then instead it's necessary to

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2 look at the actual property valuation.

3 Q Okay, but now as to the -- okay, so now as to  
4 the government studies that use actual statistical  
5 analysis, it's your opinion that they too often don't  
6 adhere to the criteria for insuring a scientifically  
7 valid study of secondary effects?

8 A I would say that they adhere neither to a  
9 common sense notion of what is reliable information, nor  
10 do they then by extension adhere to what might be a more  
11 reliable form of information obtained through standard  
12 scientific inquiry.

13 Q Okay, now it's fair to say, isn't it, Dr.  
14 Linz, that in your opinion sexually oriented businesses  
15 are no more likely to cause, no more or less likely to  
16 cause crime than a variety of other kinds of businesses?

17 A That's correct.

18 Q And you would agree, wouldn't you, Dr. Linz  
19 that there are a number of different kinds of businesses  
20 that are associated with increased crime or police  
21 activities?

22 A That's correct.

23 Q And wouldn't you agree that for example rock  
24 clubs and hip hop clubs are among the type of businesses  
25 that are likely to be associated with increased police  
26 activity?

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2 A Well, I would prefer to see empirical  
3 evidence about that.

4 Q But haven't you seen empirical evidence that  
5 supports the notion that rock clubs and hip hop clubs  
6 are the type of business that's likely to be associated  
7 with police activity?

8 A The kind of evidence that I have seen from  
9 the criminological reports has consistently identified  
10 alcohol service but has not necessarily identified the  
11 type of entertainment available as being associated with  
12 crime in a vicinity.

13 Q Let me ask you this, doctor, you testified  
14 that there are a number of different kinds of businesses  
15 that are associated with increased crime or police  
16 activity. Why don't you give me an example of one or  
17 two types of those businesses. You just said businesses  
18 that serve alcohol. Can you give us another example?

19 A Well, businesses generally where a number of  
20 people congregate as well as if you look at the  
21 so-called hot spots associated with crime in many City's  
22 and look at the empirical evidence collected by  
23 criminologists, you see that there are a number of  
24 locations.

25 Shopping malls for example are often times crime  
26 hot spots. The local high school is oftentimes a crime

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2 hot spot to a far greater degree than any other  
3 location. Bus stations and parking lots are oftentimes  
4 crime hot spots. The shelters and other missions are  
5 oftentimes crime hot spots and then ironically or not  
6 they are oftentimes associated with churches or other  
7 voluntary organizations.

8 There are often hot spots associated with, in  
9 addition to those that I mentioned, with a variety of  
10 other businesses that might include a substantial amount  
11 of customer traffic.

12 Q And isn't it true that in New York City rock  
13 clubs and hip hop clubs are often on the hot spot list  
14 for police activity and criminal activity, Dr. Linz?

15 A Now I would have to, you'd have to probe me a  
16 little bit further in the sense that I am familiar with  
17 only the briefest of information that was obtained and  
18 provided to me concerning calls for service by the  
19 police in which they indicated that the, that there were  
20 a number of crime centered businesses. My understanding  
21 was, and the reason I was interest interested in it is  
22 that none of those included the 60/40 businesses.

23 Q Okay, now you studied your study for the  
24 60/40 businesses, you testified that you got the names  
25 and locations of the various 60/40 clubs from a New York  
26 City department of planning list entitled, "Adult

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2 Establishments 2000" that was prepared in connection  
3 with the 2001 rezoning; correct?

4 A That's correct.

5 Q And is that list included not just 60/40  
6 eating or drinking establishments, but also other kinds  
7 of adult establishments and 60/40 establishments in New  
8 York City; isn't that right?

9 A That is an interesting question. As best I  
10 can recall it said "Adult Establishments 2000" on the  
11 top of the list. What was included in the entirety of  
12 the list I do not recall.

13 Q Okay now you conducted a statistical analysis  
14 regarding whether 15 of the 60/40 clubs on the list were  
15 associated with police activity, correct? I mean I can  
16 direct your attention to the --

17 A Yes, if you don't mind, please direct me.

18 Q To the exhibit that's in evidence, I believe  
19 its Plaintiff's 6 which is a copy of your report, I  
20 believe?

21 THE COURT: If it's in evidence, the  
22 Court Officer can get it.

23 THE COURT OFFICER: I think he has it.

24 A I have it.

25 Q He still has it there, your Honor. I think  
26 you probably do too if you want to follow along. The

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2 page with the list?

3 MR. MURRAY: Eighteen.

4 Q Thank you, Mr. Murray. Page 18, on the  
5 bottom of page 18, actually on page 18, you've got at  
6 the bottom of page 18 I direct your attention to where  
7 it says, "60/40 businesses open throughout the period of  
8 1998 to June 2002."

9 And then it goes over to page 19 and in that list  
10 there there are 15 businesses, 15 60/40 businesses that  
11 you looked at; is that correct, Dr. Linz?

12 A I would have to take your 15 without counting  
13 as the number that is presented here.

14 Q I can wait for you to count.

15 A Okay.

16 Q It starts at the bottom of page 18 and goes  
17 to the top of page 19?

18 A Those are the 15 that had the, A, criteria  
19 associated with them or criterion associated with them  
20 which is that 60/40 businesses open throughout the  
21 entire study period of 1998 through June 2002. Then the  
22 second category of businesses would be those that opened  
23 or closed or changed entertainment formalities between  
24 those same periods.

25 Q I'm talking about the first category there,  
26 the 15 that were opened from 1998 through 2002, you used

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2 those clubs in the first part of your statistical  
3 analysis that you described today regarding whether  
4 60/40 clubs on the list were associated with incidents  
5 of crime; isn't that right?

6 A That's correct.

7 Q And you did a different analysis for the six  
8 clubs that are in the second box that's in the middle of  
9 page 19 where it says business opening closing changing  
10 format between January '98 and June of 2002; correct?

11 A That's correct.

12 Q You did a different analysis?

13 A That's correct.

14 Q And we'll get to that analysis in a while.  
15 And then you have a third category of businesses there  
16 that were listed and you didn't study the 14 businesses  
17 that are listed in the third box because you couldn't  
18 contact them to confirm that they were operating 60/40  
19 during the entire period from '98 to 2000?

20 A Yes, I had two problems there, one is that  
21 the City could not guarantee that they were in fact  
22 60/40 businesses. And then the other problem is that I  
23 have seen other investigators not attempt to contact the  
24 business and then be fooled at the end and such that  
25 they thought that they were operating as, for example,  
26 an adult use when they were not and that can be not only

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detrimental but fatal to your findings.

Q Okay, so you used the 15 for the first part of your analysis, you didn't use the six and then the other 14; correct?

A That's correct.

Q Okay, now as to the 15 you told us that you looked for the first part of your analysis. You looked at police calls for service to the police as an indicator of crime; correct?

A That's correct.

Q Is that the same thing as 9/11 calls?

A It can be.

Q Did you get any data from the City other than 9/11 calls?

A No, we did not.

Q So if somebody called 9/11, that's what you looked at?

A That's correct.

Q And 9/11 calls as you testified, that's not the only way to measure incidents of crime; isn't that right?

A That's correct.

Q One other way to look at it at crime is to look at complaint data?

A Pardon me?

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2 Q Complaint data. You use the acronym UCR but  
3 that looks at criminal complaints, doesn't it?

4 A It's much more extensive than that, it looks  
5 at confirmed instances of criminal activity that were  
6 reported to the federal government.

7 Q It looks at more than the fact that somebody  
8 called 9/11, it looks at confirmed incidences based on  
9 complaint data and other data that's available to  
10 determine whether, in fact, there has been a crime?

11 A Yes.

12 Q Did I wrap that up properly?

13 A Yes, it is data that is reported by the  
14 enforcement agency to the federal government.

15 Q So if somebody for example has a theft and  
16 goes and makes out a police report and that goes and  
17 makes out a complaint and that becomes a police report,  
18 that would be one of the things that would be used to  
19 determine UCR data that's reported to the federal  
20 government; is that right?

21 A Well, that may trigger an event that would  
22 ultimately be reported, that is correct. But in the  
23 case of a homicide for example where the victim may not  
24 be able to fill out such report it would be a problem.

25 Q Got it. Okay, so now you looked at 9/11  
26 calls for the years 1998 through 2002, or to be more

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2 accurate I believe you testified January of 1998 through  
3 June of 2002?

4 A That's correct.

5 Q Okay, now you would agree, wouldn't you Dr.  
6 Linz, that for a study of secondary effects to be  
7 methodologically sound, at least one year needs to have  
8 elapsed after the event on your study before looking at  
9 any data reflecting neighborhood crime?

10 A My feeling is that the more years before and  
11 after an event has occurred the better off one is in  
12 studying any kind of trend.

13 Q And, in fact, it's your opinion that a number  
14 of governmental secondary effects studies were  
15 scientifically flawed precisely because they sought to  
16 measure the secondary effects of an adult entertainment  
17 business less than one year after the business had  
18 opened?

19 A Yes, I think that the longer the trend that  
20 one can establish, the better off one is.

21 Q So you would agree that less than a year you  
22 can't tell anything, yes?

23 A I would say that you are much less confident  
24 as the time period recedes.

25 Q Okay, now isn't it true that topless cabarets  
26 didn't start converting to a 60/40 configuration in New

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2 York City until the adult zoning regulations went into  
3 effect in July of 1998?

4 MR. MURRAY: Objection, your Honor. I  
5 don't know how he would have personal -- that's a  
6 factual question.

7 THE COURT: Ask him if he knows this and  
8 how does he know it.

9 Q Well, let me ask you this, Dr. Linz, were you  
10 told by the lawyers who retained you that the 60/40  
11 restriction went into effect in July of 1998?

12 A That I don't recall.

13 Q Wouldn't you agree that if there were no  
14 60/40 clubs in existence prior to 1998, then any police  
15 call data from early 1998 would not be useful in seeing  
16 whether 60/40 clubs are associated with police activity?

17 A I'm not sure about the question. I would  
18 stand by my assertion that as much data as could  
19 possibly be collected would be good. I strove for five  
20 years worth of data collection. But I don't quite know  
21 what you mean by the before the '98 part. It's a little  
22 confusing.

23 Q Let me ask you a different question. If the  
24 clubs did not convert to 60/40 until at least July of  
25 1998, wouldn't your data collected between January of  
26 '98, you know your data from the period January of '98

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2 to July of '98, wouldn't that have no relevance to the  
3 question of whether 60/40 establishments cause crime?

4 A I see what you are saying. You are saying  
5 there may be a time period there where they were in fact  
6 not 60/40 businesses?

7 Q Yes.

8 A I think that does introduce noise into the  
9 system; that is correct.

10 Q And now it's also true that if the businesses  
11 didn't configure to 60/40 until July of '98, then any  
12 police call data from July of '98 to July of '99  
13 wouldn't be particularly useful and reliable in seeing  
14 whether 60/40 clubs are associated with police activity?

15 A No, I don't think I'd agree with that. Isn't  
16 that when the 60/40 businesses are 60/40 businesses.

17 Q They are 60/40 businesses, but didn't you  
18 just tell us Dr. Linz if you don't wait a year in order  
19 to measure the effect of some kind of an event that it  
20 is scientifically that the analysis is scientifically  
21 flawed?

22 A That's why we aggregate across the several  
23 years until the 2001 period.

24 Q I'm asking you about the first year of your  
25 analysis. Isn't it true that the first year of the  
26 analysis the data might not be that helpful because the

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2 impact of changing a business to 60/40 recently wouldn't  
3 have been effectuated yet?

4 A I would agree with you if we had stopped  
5 there. But because we were able to aggregate across the  
6 '99, the 2000, and the 2001 period, that we're more  
7 confident.

8 Q Okay now when you did your analysis of police  
9 call data, you prepared census blocks with 60/40  
10 businesses to nearby census blocks that didn't have  
11 60/40 businesses; correct?

12 A That is correct.

13 Q And you looked at, and I'm quoting from your  
14 report, you looked at demographic features known to be  
15 related to crime, yes?

16 A That's correct.

17 Q And those demographic, excuse me, demographic  
18 features known to be related to crime include features  
19 like the number of African Americans in an area and the  
20 number of men over 18 in an area?

21 A That's correct.

22 Q And you concluded that the number of African  
23 Americans on a block was significantly related to the  
24 number of 9/11 calls?

25 A That's correct, with one caveat which is that  
26 as criminologists have noted it is not race per say but

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2 race as a surrogate for socioeconomic status that seems  
3 to be the, seems to account for the relationship.

4 Q And you also concluded that the number of  
5 males over 18 on a block was significantly related to  
6 the number of 9/11 calls, correct, males over 18?

7 A That is correct.

8 Q And so you controlled for those demographic  
9 features in your statistical analysis?

10 A Those as well as others, that's correct.

11 Q But you didn't control for the presence of  
12 any kind of establishment that might be associated with  
13 increases in police activity, did you?

14 A Well, you may say that we did in the sense  
15 that in the second study what we list as in the hot spot  
16 study we list addresses that may be those types of  
17 establishments that that occur, or that have a higher  
18 level of crime incidents than do the 60/40  
19 establishments.

20 Q Right, but I'm not talking about the hot spot  
21 analysis yet, I'm talking about the first part of your  
22 analysis where you are controlling for things that might  
23 have an impact on crime.

24 You testified that there are certain kinds of  
25 businesses that might cause crime, and my question is  
26 you didn't control for the presence of those kind of

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2 businesses in the first part of your analysis?

3 A That's correct.

4 Q Okay, and in fact you didn't control for any  
5 differences in building use, or what we call land use in  
6 the first part of your analysis?

7 A That's correct.

8 Q You only controlled for these demographic  
9 variables?

10 A That's correct. Well, I should say that  
11 that's not totally correct. We do control for land use  
12 in the sense that we have a variable that has to do with  
13 whether or not the household is inhabited by family  
14 members or non family members as an index of the degree  
15 of social heterogeneity in the area.

16 Q But you don't control for the different types  
17 of say commercial use, et cetera, or other uses --

18 A No, we do not.

19 Q -- that might be present in the neighborhood  
20 or in the census block is the end of my question that  
21 you cut off, and I need the end of the question for the  
22 record.

23 A Can I elaborate just a little bit in the  
24 sense that we did examine many of the census variables,  
25 but New York City is a relatively unique place and many  
26 of the census variables that would be surrogates for

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2 land use did not appear to be associated with crime.

3 But my experience has been that is because things can  
4 change very rapidly block to block in New York City.

5 Q You didn't control for those things that was  
6 my question?

7 A That is correct.

8 Q Now based on your analysis, the first part of  
9 your analysis, you determined that the presence of a  
10 60/40 club on a block didn't make a difference in the  
11 number of 9/11 calls between '98 and 2002, correct? Or  
12 June of 2002 didn't have an impact?

13 A That's correct.

14 Q And you would agree, wouldn't you, Dr. Linz  
15 that not all crimes are reported via the 9/11 system?

16 A I don't think that there is good evidence one  
17 way or the other to suggest what types of crimes are or  
18 are not reported with regard to the 9/11 system.

19 Q Wouldn't you agree for example that a topless  
20 club patron who has his wallet stolen while he's at a  
21 topless club might not call 9/11 on his cell phone to  
22 report the crime while he is there?

23 A No.

24 Q You wouldn't agree to that?

25 A No.

26 Q You don't credit the possibility that he

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2 might not call 9/11 on his cell phone?

3 A I don't think there is any more or less  
4 likely than someone in another business. Particularly  
5 in the 60/40 situation. Because this is a situation in  
6 which there are from my experience a variety of forms of  
7 entertainment and customers, and I see no reason why  
8 there wouldn't be a huge sting about a wallet being  
9 missing, and a call being made. It just would seem to  
10 me to be similar to any other business.

11 Q You wouldn't agree that he would be more  
12 likely to after the fact file a police report  
13 complaining about the incident than he would be to call  
14 9/11 from the establishment itself on his cell phone?

15 A No, I mean there is every reason to believe  
16 that he would be more likely to call, because perhaps he  
17 has taken his last \$200 to have a wonderful evening in  
18 60/40 and that has been stolen, and he's really  
19 interested in doing something about it.

20 Q Let me ask you this, Dr. Linz, would you  
21 agree that prostitution is what's often called a  
22 victimless crime?

23 A That is how it's referred to by  
24 criminologists often, yes.

25 Q And that's because in general neither the  
26 prostitute nor the person who hires the prostitute is

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2 likely to report the crime of prostitution to the  
3 police; isn't that true?

4 A Well, that's the assertion about who the  
5 victim is. However, if the victim is a neighbor whose  
6 witnessing prostitution and they are victimized by that  
7 blight in their neighborhood perhaps I think they would  
8 be very willing to call.

9 Q But neither the prostitute nor the victim is  
10 typically someone who makes that call; correct?

11 A I think the evidence are from criminologists  
12 is that those individuals are not willing, but that  
13 doesn't mean that that dampens the amount of calls to  
14 the police for prostitution by citizens or others that  
15 may observe that kind of activity.

16 Q Now let's move onto your hot spot analysis.  
17 As to the 60/40 clubs that were operating, you looked at  
18 data from '98 through the middle of 2002, and you did an  
19 analysis where you -- withdrawn.

20 In your hot spot analysis you analyzed where the  
21 addresses of the 60/40 clubs range among the other  
22 addresses in the census block in terms of determining  
23 the frequency of 9/11 calls; correct?

24 A That is correct.

25 Q And you concluded that 60/40 businesses  
26 account for less than ten percent of the crime in their

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2 census blocks; correct?

3 A Yes, that's correct.

4 Q And you give us a list of addresses here,  
5 let's take a look. Could you maybe direct my attention  
6 since you can find it faster than me in Exhibit 6A to  
7 where your hot spot analysis is?

8 A You can start with table seven.

9 Q I'm sorry?

10 A Beginning with table seven, unfortunately  
11 these table pages.

12 Q Let me find table seven. I had a hard time  
13 finding it during your direct examination. Where does  
14 it start? I see three, four, five, six.

15 MS. BINDER: It's not an exhibit, but I  
16 do have a copy of it.

17 THE COURT OFFICER: Of 6A, that's what  
18 he is talking about.

19 MS. BINDER: I had an extra copy of the  
20 tables. You keep yours, Dr. Linz, we'll find your  
21 Honor a copy, I have an extra copy of the tables  
22 although actually that's the one I'm using to  
23 examine the witness.

24 THE COURT: Okay, let's continue because  
25 it's not absolutely necessary.

26 Q Okay, so now table seven you have lists of

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2 addresses and the frequency of the 9/11 calls associated  
3 with that address; correct?

4 A That's correct.

5 Q But you don't identify the nature of what  
6 these addresses are as part of this analysis, do you?

7 A No, we do not.

8 Q And you testified before that you know there  
9 are a number of different types of businesses that are  
10 associated with police activity; correct?

11 A That is correct.

12 Q But essentially not controlling for the  
13 difference in the uses of these particular addresses in  
14 this study, you are just listing the addresses and the  
15 number of police calls associated with those addresses;  
16 correct?

17 A I'm not controlling again for what?

18 Q You're not controlling for the type of  
19 business or the actual use of the premises that's listed  
20 in table seven. You are just listing the business and  
21 the number of 9/11 calls for that business?

22 A I have to disagree. We are controlling for  
23 it in that if any of those businesses are part of this  
24 list, they'll appear there. Do I know that those  
25 businesses are? You are absolutely right, I do not.

26 But I mean it takes into account the idea that

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2 there maybe other businesses aside from the 60/40  
3 business that are alcohol serving. For example  
4 businesses or other kinds of venues that come to the  
5 attention of the police more often.

6 Q All I'm saying, Dr. Linz, is you can't tell  
7 from this analysis what's at any of these addresses, can  
8 you?

9 A No, you cannot tell from this table. I  
10 wouldn't say you can't tell from the analysis because  
11 someone could go to that address or call that aside and  
12 determine what's there.

13 Q Someone could. But in your assessment of  
14 whether 60/40 clubs are hot spots you just looked at  
15 pure address data without controlling for differences in  
16 the type of businesses?

17 A We may just have a slight difference in the  
18 vocabulary. I wouldn't use the word "controlling" for  
19 it. What I would say is I cannot tell you that those  
20 addresses are or are not alcohol serving establishments,  
21 for example, which I know are associated with calls for  
22 service to the police unless I would do further  
23 investigation.

24 Q So my only point, Dr. Linz, is that some of  
25 these businesses that, the businesses that out rank the  
26 60/40 business we can't see what they are from this

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1 Dr. Linz - Cross - Binder

2 analysis, that is the nature of the business; correct?

3 A That's correct.

4 Q Now in your hot spot analysis you looked at  
5 15 clubs that you determined were operating through,  
6 operating 60/40 between '98 and 2002. You looked at the  
7 same 15 clubs that you looked at in the first part of  
8 the analysis; correct?

9 A That's correct.

10 Q But you also included a 16th club in this  
11 analysis, Club 44, and you can look for Club 44 in table  
12 seven and see if it is present. I have it, it's about  
13 maybe seven pages into table seven.

14 A After Bare Elegance, Club 44, that's correct.

15 Q But you note elsewhere in your analysis that  
16 Club 44 didn't open as a 60/40 establishment until 2001;  
17 correct? I mean take a look at Exhibit 6, page 19?

18 A I don't dispute that, you may be exactly  
19 right.

20 Q So it may have been if Club 44 didn't open  
21 until 2001 it was a mistake to put Club 44 in this?

22 A I wouldn't say that. I would say it's  
23 apparently more information than what you want. What it  
24 says is that during that course of activity, that period  
25 1998 to 2002, that Club 44 had ten calls for service  
26 that may have been during the period they were 60/40 may

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1 Dr. Linz - Cross - Binder

2 not have been, but that represented two percent of the  
3 crime in the area.

4 Q But you identified elsewhere in your analysis  
5 that they didn't open 60/40 until 2001; correct?

6 A That's correct.

7 Q And, in fact, well are you aware as to  
8 whether Club 44 was a bikini bar between 1998 and 2001?

9 A No, I'm not sure of it's exact status. I may  
10 be able to review this report and determine that, but  
11 upon you asking it I do not recall.

12 Q Now you did, Dr. Linz, you did this before  
13 and after analysis of some of the other 60/40 clubs;  
14 correct?

15 A That's correct.

16 Q And you examine 9/11 calls before and after  
17 the opening of a few different 60/40 clubs that were on  
18 the City planning list from 2000, correct, to the year  
19 2000, yes?

20 A I'm sorry?

21 Q Okay, you examined 9/11 calls before and  
22 after the opening of a few different 60/40 clubs that  
23 were on the City planning list in 2000?

24 A Yes, I would amend that only in the sense  
25 that we look for an event of either opening or closing.

26 Q During that window that you were studying?

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1 Dr. Linz - Cross - Binder

2 A That's correct.

3 Q And you sought to determine whether the  
4 opening of a new 60/40 club would have an impact on  
5 police activity; correct?

6 A That is correct.

7 Q And you also looked at the closing of a  
8 couple of 60/40 clubs; correct?

9 A Yes. Some.

10 Q But you didn't do any before and after  
11 analysis for clubs that reconfigured from a hundred  
12 percent adult to 60/40, did you?

13 A No, I don't know that during the study period  
14 we were able to necessarily determine that.

15 Q You determined that clubs had reconfigured to  
16 60/40 at some point because you identified those clubs  
17 and you studied the data associated with those clubs?

18 A Right.

19 Q And attempted to study them?

20 A I see, yes, our mandate was to study whether  
21 the 60/40 club changed or not throughout the study  
22 period. I only examined, I was only interested in the  
23 60/40 businesses, that is correct.

24 Q I understand that and I'm asking you took for  
25 example if a 60/40 club opened out of the blue, it  
26 wasn't any cabaret before, but it was a new cabaret, it

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1 Dr. Linz - Cross - Binder

2 opened for the first time say in the year 2000 as a  
3 60/40 club, you attempted to study whether that opening  
4 of a 60/40 club had an impact on police activity  
5 through, you know, on police calls for service?

6 A That's correct.

7 Q But you didn't take the clubs that had  
8 reconfigured from a hundred percent to sixty percent,  
9 you didn't study calls for service back in say '97 when  
10 they were a hundred percent adult, and then look at  
11 calls for service after '98 when they configured?

12 A I see what you are saying. That's an  
13 interesting hypothesis, that would not seem to be what  
14 the City's contention is.

15 If that's the hypothesis that would be the City's  
16 hypothesis that changing to 60/40 would reduce crime and  
17 that wasn't the question that we were examining.

18 If the City assumed that going to 60/40 was going  
19 to decrease crime, we would have been happy to look at  
20 that. But the hypothesis was the 60/40 businesses as I  
21 understand it were sufficiently adult in the City's mind  
22 that they should be associated with crime.

23 Q Isn't it fair to say that the City's  
24 hypothesis is that a 60/40 business is the same,  
25 essentially the same as an 100 percent business, so  
26 isn't that essentially the City's hypothesis?

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1 Dr. Linz - Cross - Binder

2 A I think that that's what has emerged as the  
3 City's hypothesis. I'm not sure that was the hypothesis  
4 at the time. But if that is not a question which we  
5 would have examined, because the assumption was I  
6 thought on the part of the City that if you change to  
7 60/40 or had someone change to 60/40, there would be no  
8 difference, so why would I examine that.

9 Q If the City's assumption is that if you  
10 change to 60/40 there is no difference, and wouldn't you  
11 want to show that the City was wrong by examining the  
12 impact of the club when it was a hundred percent, and  
13 then subsequently examining the impact of the club when  
14 it was 60/40?

15 A Well, I'm not sure. I mean my mandate what I  
16 was asked to investigate was the impact of the 60/40  
17 establishments in the community. As time went on,  
18 however, it seems to me the City had various theories  
19 about what the difference was between the 100 and the  
20 60/40.

21 Q But it's fair to say that your statistical  
22 analysis doesn't support the conclusion that decreasing  
23 adult entertainment from a hundred percent to 40 percent  
24 would cause a decrease in police activity or crime?

25 A I would say my analysis substantiates the  
26 notion that 60/40 businesses are not associated with

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1 Dr. Linz - Cross - Binder

2 crime. That is the most I would say confident opinion  
3 that I can render.

4 THE COURT: I think we'll break for  
5 lunch.

6 MS. BINDER: Your Honor, I have two more  
7 questions of this witness and then I can at least  
8 finish.

9 THE COURT: Okay.

10 MS. BINDER: Isn't it -- now I've lost  
11 my train of thought. Maybe we should pick up after  
12 lunch.

13 THE COURT: We'll return at 2:15.

14 MS. BINDER: Okay.

15 (Luncheon Recess.)

16 (Afternoon session).

17 THE COURT: Any further  
18 cross-examination?

19 MS. BINDER: I do, your Honor, just a  
20 little more. And I also want to point out that  
21 over the lunch break we went back and looked for  
22 cases on that issue of the admissibility of expert  
23 reports, and I found a case that's more on point  
24 than the cite I gave your Honor this morning.

25 Although this one also is not a First  
26 Department case it's a Fourth Department case, it's

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1 Dr. Linz - Cross - Binder

2 called Ornon versus Craig, and the cite is 184 AD  
3 2d 1048. And it's a 1992 case.

4 THE COURT: Could you give me the  
5 citation again?

6 MS. BINDER: I'm sorry, your Honor, 184  
7 AD 2d 1048. And it's a Fourth Department 1992.  
8 And what it basically says is that expert reports  
9 are prior consistent statements, and like prior  
10 consistent statements can't be used to bolster the  
11 testimony of a testifying expert.

12 THE COURT: But in this case the report  
13 was offered only after he gave us the foundation  
14 for the report. He had not testified to the  
15 contents yet. Then it's not a prior consistent  
16 statement because he hadn't given us a statement  
17 yet. And I think that that applies only when he  
18 testifies to all the contents of the report and  
19 then he wants to put it in evidence.

20 MS. BINDER: It's just our position,  
21 your Honor, for the record that it doesn't matter  
22 which order because as a practical matter the  
23 report is serving to be a writing that he prepared  
24 prior to coming to Court that bolsters his  
25 testimony that he gave in Court. I'm just trying  
26 to make a record on this, your Honor.

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1 Dr. Linz - Cross - Binder

2 THE COURT: Okay.

3 MS. BINDER: So I'll just continue with  
4 the cross-examination a few more questions for Dr.  
5 Linz.

6 BY MS. BINDER:

7 Q Dr. Linz, it's true, isn't it, that with  
8 respect to your analysis of police calls for service,  
9 you didn't do a before and after study showing the  
10 impact of any particular cabaret changing from a hundred  
11 percent to 60/40?

12 A That is correct.

13 Q And it's also true that you didn't do an  
14 analysis of 9/11 calls that compares the class of 60/40  
15 clubs to the class of a hundred percent adult clubs that  
16 are still in existence; correct?

17 A That's correct.

18 Q And, in fact, you yourself have never seen  
19 any evidence sufficient to convince you that a hundred  
20 percent adult establishment has an impact on crime or  
21 police activity?

22 A That is correct.

23 Q In fact, you don't believe that the class of  
24 a hundred percent adult establishments have any impact  
25 on crime or police activity?

26 A That is what my empirical studies show.

AT

1 Dr. Linz - Cross - Binder

2 Q And so it's fair to say, isn't it, that had  
3 you done a before and after study of a club's change  
4 from a hundred percent to 60/40, you wouldn't expect to  
5 find any change in the impact of the club on crime or  
6 police activity?

7 A No, that's an empirical question.

8 Q It's an empirical question, but it's fair to  
9 say that you've never seen any evidence so far that a  
10 hundred percent, that hundred percent adult clubs have  
11 an impact on crime or police activity?

12 A My empirical studies don't show that, that's  
13 correct.

14 MS. BINDER: Okay. I have nothing  
15 further, your Honor.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. MURRAY:

19 Q Dr. Linz, tell us what empirical studies  
20 you've done on that subject?

21 A I have never --

22 Q On the subject of a hundred percent?

23 A What empirical studies I've done?

24 Q To conclude that they don't cause adverse  
25 secondary effects?

26 A Among the published studies that I have

AT

1 Dr. Linz - Cross - Murray

2 completed, we for example could mention the North  
3 Carolina study, the Charlotte North Carolina study in  
4 which we've examined 20 100 percent adult businesses in  
5 neighborhoods across Charlotte North Carolina and found  
6 no affects for crime associated with these businesses.

7 Another published study as I mentioned was a study  
8 of peepshow establishments in San Diego.

9 Q Let's stick with adult nightclubs.

10 A Okay, that further would be a study recently  
11 conducted or recently published I should say for Ohio  
12 City's which we examined the impact of liquor serving  
13 adult nightclubs on crime measured in a variety of ways  
14 found no effects for the presence of those businesses in  
15 the communities of Dayton, Toledo, Columbus and  
16 Cleveland that is published as well last year.

17 Q Did you do a study in Fort Wayne?

18 A Yes, I have.

19 Q Tell the Court about that?

20 A That was a 100 percent business study,  
21 although they don't make the distinction between partial  
22 and 100 percent, it's the study of adult nightclubs that  
23 served alcohol in Fort Wayne Indiana looking at the  
24 impact at those nightclubs on criminogenic activity and  
25 found not only a no association, but a mild decrease of  
26 criminal activity around those fully adult businesses

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1 Dr. Linz - Cross - Murray

2 compared to control sites in the City.

3 Q Was that study published?

4 A That study was not published but has been  
5 peer reviewed in a number of circumstances. One  
6 involving an academic meeting in which it had been peer  
7 reviewed by those that accepted it for presentation, and  
8 then the Justice Department has also examined that study  
9 and it received an award for crime mapping or  
10 applications in crime mapping some years ago.

11 Q Now you were asked about Defendant's Exhibit  
12 PP. Is that still in front of you for identification?

13 THE COURT OFFICER: I gave that back to  
14 plaintiff because it was identification.

15 Q That was your article?

16 A Yes, that was the article published in  
17 communication law and policy.

18 Q And what was the subject matter of that  
19 article?

20 A That was a review of many studies that are  
21 being conducted by municipalities all that could be  
22 obtained at the time, but then a ranking of the top ten  
23 studies that were cited by municipalities across the  
24 country, and we evaluated those studies in terms of four  
25 methodological criteria which we've developed to  
26 determine whether or not the studies could reliably

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1 Dr. Linz - Cross - Murray

2 reveal something about the impact of adult businesses on  
3 crime, and I should say proposal rules.

4 Q And without going through the whole thing,  
5 what were the basic four criteria?

6 A I'd like to ask four questions when thinking  
7 about this. One is compared to what question that is to  
8 say has the municipalities or the persons engaged in  
9 studying adult businesses attempted to compare the adult  
10 business to a suitable control area or control region  
11 that might allow us to say compared to comparable  
12 matched control area, does the area surrounding that  
13 adult business have more or less crime.

14 The second question I think that is important is  
15 always to ascertain that there has been enough data to  
16 make a reliable inference about the effects. And as I  
17 mentioned before I'm skeptical of the studies that only  
18 have a few days or months or a year of data as opposed  
19 to those that have multiple years and data because crime  
20 tends to fluctuate up and down.

21 The third question that we always ask is a means of  
22 trying to determine whether or not there is reliability  
23 is the idea of whether or not the police or other crime  
24 information has been obtained in a reliable fashion.

25 One thing for example that often happens is that  
26 municipalities are interested in finding crime or

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conducting special investigations that may yield more crime because of an interest or suspicion about adult businesses. And my contention is that if one spends time looking for crime you're likely to find more crime. Finally then would be the case if you weren't under a mission of that sort.

And then the fourth question asked is do the municipalities that are conducting studies adhere to some of the standard methodology acceptable for conducting a survey. Research which contains or which includes rather some ideas such as is there sufficient response rate to the questionnaire if it's questionnaire research, has there been an attempt to determine whether or not there is bias associated with those people that did respond.

And in that case the City or municipality not just getting opinions from people who wish to complain or be vocal about the problem as opposed to a random sample of individuals that might adequately represent the community, and has there been proper statistical measures taken so that an error rate can be calculated regarding this survey.

So I asked those four questions of all of the municipality studies to determine if they meet if you will methodological muster. And I have been oftentimes

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1 Dr. Linz - Cross - Murray

2 very disappointed with the quality of those studies.

3 Q Now in fact talking about surveys and what  
4 your criticism has been, I'm glad you mentioned that, do  
5 you have any objection to surveys being done if the  
6 questions are unbiased and if the respondents are given  
7 a free opportunity to answer the questions or not, and  
8 if statistical then analysis is done of those survey  
9 questions?

10 A No, if the surveys are conducted in what's  
11 according to proper methodological standards I have no  
12 problems. In this area many surveys tend to be done  
13 with regard to property values, and I'm not so sure that  
14 people can, even real estate professionals can  
15 necessarily tell you what the impact of an adult  
16 business is on property values simply by hypothesizing.  
17 I think that you have to have actual data for this.

18 Q That's for real estate values?

19 A That's correct.

20 Q Now speaking of real estate values, you were  
21 asked a question and just repeated it that you need a  
22 sufficiently lengthy period of time in order to  
23 determine crime statistics; is that correct?

24 A Well, you need a sufficient period of time in  
25 order to determine if any increases or decreases in  
26 crime are due to what we know are the continually

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1 Dr. Linz - Cross - Murray

2 fluctuations of crime in many areas including New York  
3 City.

4 So for example if you looked at our charts on the  
5 page the figure, let's just find one that illustrates  
6 this. You might look at the crime patterns around  
7 Gallagher's. As you can see they jump around from year  
8 to year. And then by the difference between 2002 for  
9 example on average in 1998 is a fairly substantial one.

10 So if I were to measure this point right here in  
11 which I were to see a business change and I saw that  
12 crime went down I might say, holy cow, if you introduce  
13 a 60/40 business into the community crime decreases.  
14 But I'd be wrong about that because in general crime had  
15 been decreasing without those comparable controls. I  
16 wouldn't really know that that is the case.

17 So because crime does in various as you can see  
18 where ten blocks here bounces around from place to  
19 place, the fair number of deviations you've got to be  
20 careful that you have enough observations pre and post  
21 any change in the business configuration.

22 Q Now in giving that testimony I want to be  
23 clear in what you are talking about, if the subject  
24 matter is whether the presence of the businesses cause  
25 the adverse secondary effects of lower property values,  
26 is the same standard applicable or a shorter period of

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1 Dr. Linz - Cross - Murray

2 time?

3 A A shorter period of time is fine in my  
4 estimation because real estate prices don't fluctuate  
5 with the same degree of uncertainty that crime  
6 fluctuates.

7 Q Now you were asked about your hot spot  
8 analysis and whether you took into account the control,  
9 some controls with respect to the businesses that were  
10 higher up on the list; do you recall that?

11 A Yes.

12 Q Explain if it's true why that isn't relevant  
13 to a hot spot analysis? What is a hot spot analysis?

14 A Well, a hot spot analysis is the  
15 identification of a particular geographic area of those  
16 points defined by addresses or perhaps smaller regions  
17 within the area that attract a kind of a confluence of  
18 victims who were targets and crime perpetrators as well.

19 And so the hot spot reveals that area on a  
20 practical level that the police might want to  
21 concentrate their activities towards.

22 In terms of analysis of the hot spot is merely  
23 arranging from top to bottom of those identifiable  
24 points that are more versus less problematic to the  
25 police, in this case measured by calls for service.

26 Q And if 60/40 businesses were hot spots, what

AT

1 Dr. Linz - Cross - Murray

2 would you expect to have found when you did that  
3 analysis?

4 A Well, there is always a question about what  
5 the criteria is but I would have expected some major  
6 portion of the crime that calls for service to be  
7 attributed to the 60/40 businesses they would have risen  
8 to the top of that ranking. What we found was almost  
9 universally that they were either not on the chart at  
10 all or they had fallen in substantially at lower points  
11 on the ranking of crime hot spots within the areas  
12 surrounding those businesses.

13 Q You've been talking about calls for service  
14 that you used for your report, and counsel was asking  
15 you, I think she used the term 911 calls; do you recall  
16 that?

17 A Yes, I do.

18 Q What are the various sources for calls for  
19 service for a Police Department?

20 A Well, primarily it is 911 calls that would be  
21 a citizen or some other individual calling in and  
22 saying, "I'd like to report that something is occurring,  
23 there is a suspicious activity, or there is a loud  
24 noise, or there is a group of people outside my  
25 apartment window, or there are, there is a drunken  
26 person on the sidewalk", or any number of such reports.

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1 Dr. Linz - Cross - Murray

2 Or it could be a merchant calling saying, "I've  
3 just been robbed or suspected I've been robbed or  
4 burglarized". So those would be calls primarily to the  
5 police by someone who feels that there has been a  
6 disturbance or a law broken or something that warrants  
7 the police attention. And for the most part what we  
8 have in our data set are those 911 calls.

9 There are other ways that the police could become  
10 involved, however, that wouldn't involve necessarily a  
11 911 call, but could still be registered in the system.  
12 There is for example a burglar alarms and other things  
13 that oftentimes automatically registers something in the  
14 system. But if they are burglar alarms that are false  
15 alarms for example that is almost noted in every case we  
16 eliminate those are from our analysis.

17 Q What if somebody just calls the regular  
18 Police Department number not 911 and reports a problem  
19 that a police officer has to come out and investigate?

20 A It is my impression that will also register  
21 in the system as a dispatch.

22 Q Now there has been some talk about UCR's as  
23 distinguished from calls for service. In the universe  
24 of crimes that are captured by UCR's, are there criminal  
25 incidents that are not captured by UCR statistics that  
26 are captured by calls for service?

AT

1 Dr. Linz - Cross - Murray

2 A Are there criminal incidents? Yes.

3 Q Explain why that would be?

4 A Well, it would be the case for example that  
5 someone may call in with regard to the hooliganism or  
6 drunkenness which is a large part of the urban blight  
7 kinds of ideas that people have about adult businesses.

8 And those incidents may result in someone being  
9 taken for questioning, or someone cited or given a  
10 ticket, or the street being cleared, or someone being  
11 taken into the police by the automobile and sat down and  
12 talked to and questioned, none of that, however, would  
13 ever register with something like the UCR which only  
14 takes into account a small set of violent crimes and a  
15 small set of property crimes that would have to be  
16 processed through the system and ultimately result in an  
17 arrest where there would be a report to the, or at least  
18 a verification of the crime oftentimes through arrest  
19 and a report made to the federal government.

20 So it scoops up a tremendously wide amount of  
21 possible disturbances in the neighborhood that would not  
22 be touched at all by something like UCR.

23 Q And finally, doctor, in terms of you were  
24 asked about again your opinion about the studies that  
25 have shown or not shown a hundred percent adult  
26 nightclubs to cause or not cause adverse secondary

AT

1 Dr. Linz - Cross - Murray

2 effects; correct?

3 A That's correct.

4 Q Are you aware of any study other than your  
5 own that you have testified to today in any of the  
6 studies that cities and counties and other governmental  
7 entities have done on the subject of adverse secondary  
8 effects that have actually studied the 60/40 business  
9 model that is prevalent in New York City?

10 A No.

11 MR. MURRAY: May I have one moment, your  
12 Honor?

13 THE COURT: Okay.

14 MR. MURRAY: That's all I have.

15 MS. BINDER: Just two things briefly on  
16 recross.

17 THE COURT: Go ahead.

18 RECROSS-EXAMINATION

19 BY MS. BINDER:

20 Q Dr. Linz, isn't it true that the data you got  
21 from New York City consisted only of 911 calls?

22 A I think that is primarily so. I think that  
23 is also the case that a dispatch may register in this as  
24 well.

25 Q You didn't get data of police dispatches, did  
26 you?

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1 Dr. Linz - Recross - Binder

2 A It was not called specifically.

3 Q I'm sorry?

4 A My experience, however, has been that these  
5 records will oftentimes contain dispatches as well.

6 Q Just so we're clear, wasn't the record itself  
7 identified as being instances of 911 calls?

8 A Yes, it was.

9 Q Okay, now earlier you testified when I was  
10 examining you before that there were certain kinds of  
11 places, certain kinds of businesses that you would  
12 expect to be associated with increases in criminal  
13 activity, and the examples you gave were things like  
14 shopping malls, high schools, bus stations, and even  
15 church because these are places that have a substantial  
16 amount of customer traffic; correct?

17 A That's correct.

18 Q And your hot spot analysis where you rank  
19 places based on the number of arrests is, or the number  
20 of police calls at the particular place you don't  
21 indicate what type of customer traffic that place has,  
22 do you, Dr. Linz?

23 A No, we do not.

24 Q And you didn't indicate the type of business  
25 that it was?

26 A No.

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1 Dr. Linz - Recross - Binder

2 Q You just compared addresses with other  
3 addresses?

4 A That's correct.

5 MS. BINDER: I have nothing further.

6 THE COURT: You are excused, sir.

7 THE WITNESS: Thank you.

8 MR. MURRAY: Your Honor, in order to  
9 complete my record, could I just make a proffer for  
10 the record of what, not with the witness, but what  
11 we would have established had the questions and  
12 answers that were objected to and the objections  
13 were sustained what evidence we would have put into  
14 the record?

15 THE COURT: An offer of proof, yes.

16 MR. MURRAY: Your Honor, had the witness  
17 been permitted to get into it he would have  
18 explained that he visited four 100 percent clubs  
19 two nights ago, Penthouse, Hustler, Flashdancers  
20 and Rick's Cabaret.

21 That his observations included the fact  
22 that there was a very intense erotic message  
23 communicated from the moment you walked into the  
24 door throughout the entire premises. That the  
25 premises were saturated with erotic displays,  
26 photographic art with a very large number of

AT

**PGS. 400 – 484**  
**OMITTED**



2 SUPREME COURT OF THE STATE OF NEW YORK  
3 NEW YORK COUNTY - CIVIL BRANCH - PART: 2  
4 -----X  
5 TEN'S CABARET, INC., f/k/a Stringfellow's  
6 of New York, Ltd., PUSSYCAT LOUNGE, INC.,  
7 d/b/a "Pussycat Lounge", CHURCH STREET  
8 CAFE, INC., d/b/a "Baby Doll" and 69-20  
9 QUEENS BLVD., INC., d/b/a "Nickels",  
10 Plaintiffs,

11 -against-

INDEX NO.  
121197/02

12 THE CITY OF NEW YORK, MAYOR MICHAEL  
13 BLOOMBERG, as MAYOR, etc., et al,  
14 Defendant.

15 -----X  
16 71 Thomas Street  
17 New York, New York  
18 February 27, 2009

19 B E F O R E:

20 HONORABLE LOUIS B. YORK, Justice

21 A P P E A R A N C E S:

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ANGELA TOLAS, CSR  
OFFICIAL COURT REPORTER

AT

**PGS. 486 – 571**  
**OMITTED**

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Proceedings

THE COURT: Okay, plaintiffs.

MR. MURRAY: Yes, your Honor. We would

call Michael Anastas at this time, your Honor.

M-I-C-H-A-E-L A-N-A-S-T-A-S, called as a witness,  
having been first duly sworn, was examined and testifies  
as follows:

COURT CLERK: Please state your name.

THE WITNESS: Michael Philip Anastas.

COURT CLERK: Spell the last name

please?

THE WITNESS: A-N-A-S-T-A-S.

COURT CLERK: And your address?

THE WITNESS: [REDACTED]

COURT CLERK: And the zip code.

THE WITNESS: [REDACTED]

COURT CLERK: Thank you. You may be  
seated. The witness has been sworn, your Honor.

THE WITNESS: Thank you.

THE COURT: Okay, you may inquire.

MR. MURRAY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MURRAY:

Q Mr. Anastas, please tell the Court what your  
occupation is or was?

AT

JNR-001207

1194

712

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1                   Anastas - Direct - Murray

2           A       I am a market research consultant  
3 specializing in consumer perception.

4           Q       And are you retired or still active?

5           A       Yes, I'm semi retired.

6           Q       When did you go into semi retirement?

7           A       Around 2005, 2006.

8           Q       What is your educational background?

9           A       I graduated from Ohio University in Athens  
10 with a Bachelor of Science and in journalism.

11          Q       What year?

12          A       1959.

13          Q       What has your career been since graduating  
14 from college? Why don't you briefly describe it for the  
15 Court?

16          A       Well, in most recent years I have been a  
17 consultant using market research to help companies  
18 understand the perception consumers have of their  
19 products and services.

20          My clients have included Xerox Corporation, Jersey  
21 Central Power and Light, Cannon Corporation, People's  
22 Bank of Bridgeport, and any number of other financial  
23 and business concerns.

24          I also was a specialist in consumer goods, so my  
25 clients had included Proctor and Gamble and the Guldens  
26 Mustard people and any number of package goods products.

AT

JNR-001208

713

574

1                   Anastas - Direct - Murray

2       And I started my company in 1983.

3           Q       What's the name of the company?

4           A       Focus Probe, Inc.

5           Q       And what are the categories of services that  
6       Focus Probe Inc.'s provided to various clients?

7           A       Primarily consumer perception and opinion is  
8       investigating using qualitative research, that is most  
9       familiar are focus groups, focus group discussions where  
10      ten people are gathered to represent the consumer group  
11      and discuss an issue.

12           I also pioneered the use of short but in depth  
13      interviews up until the time I started it. In depth  
14      interviews were generally 90 minutes long and quite  
15      cumbersome and expensive, so I found a way to focus on  
16      the client's issue and still achieve the benefits of an  
17      in depth interview.

18           Q       What other techniques have you used in your  
19      business to gather information about products or other  
20      subject matters?

21           A       I was a very heavy user of mall intercepts  
22      which is, perhaps you've seen the people with clipboards  
23      out in the mall recruiting people for taste tests and  
24      other research. I liked to get people on the spur of  
25      the moment. They were more free with their opinion and  
26      they were very easy to interview, as opposed to

AT

JNR-001209

714

575

1                   Anastas - Direct - Murray

2       prerecruiting them by telephone and having them make an  
3       appointment and there is a certain amount of anxiety  
4       involved in going to an interview.

5           Q       So that's a technique, I'm sorry, it's called  
6       a mall intercept?

7           A       Mall intercept. There are or had been at  
8       that time dozens of market research companies with  
9       facilities in large shopping malls where I could rent  
10      the space and the recruit test and have respondents  
11      brought to you.

12          I did a major study for Warner Lambert on the  
13      repositioning of Trident. Trident always used to talk  
14      about the dentists using or recommending Trident. What  
15      that did is drove Trident's image down among young  
16      people. They associated it with dental hygiene and good  
17      for you and the opposite of fun.

18          So I recruited 200 teenagers, not an easy group to  
19      interview by the way, in malls across the country, and  
20      places like Mesquite Texas, and showed them dozens of  
21      photographs and asked them to project their feelings  
22      about chewing gum and various brands.

23          And from that study Warner Lambert repositioned  
24      Trident in a much more youthful energetic way with great  
25      success. I was very proud of that study.

26          Q       Now is a mall intercept any different from

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JNR-001210

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1                                   Anastas - Direct - Murray

2 something known as a street intercept?

3           A       No, it's just the where.

4           Q       What is a street intercept?

5           A       A street intercept is when you use people  
6 when they are outside perhaps in a park or in a place  
7 where they are waiting.

8           I found that years ago I needed to do some quick  
9 research for one of my clients and I discovered that  
10 there are hundreds of people in line at the tickets  
11 booth in Times Square, perhaps you've seen them, and  
12 they are bored to tears.

13           So I had my interviewers go there and show them the  
14 ad we were studying and interview them. And you got  
15 people in that case at the tickets booth you got people  
16 from all over the country, and it was like an instant  
17 research. And of course we didn't pay them anything so  
18 it was no expense.

19           And it taught me that doing research among people  
20 out in the world is a good thing to do because you get  
21 good honest answers.

22           Q       Is the street intercept method a recognized  
23 method of gathering research on people's perception on  
24 products and other subject matters in the industry?

25           A       Yes, yes, yes.

26           Q       Now did there come a time where you were

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JNR-001211

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1                   Anastas - Direct - Murray

2   asked to do a market research study of people's  
3   perception in New York City with respect to the quality  
4   of life as between what we're going to call subdued  
5   signage for adult entertainment businesses versus loud  
6   signage for such businesses?

7           A       Yes. The issue at hand was quality of life.  
8   Is there a difference in the quality of life between a  
9   neighborhood in which one of the loud garish clubs was  
10   operating versus the quality of life perceived, the  
11   perceived quality of life in a neighborhood where the  
12   signage was up and the presentation was more subdued and  
13   didn't have the same offense.

14          Q       And did you, in fact, design a survey which  
15   had as its object collecting data that would permit you  
16   to answer that question?

17          A       Yes.

18          Q       And can you describe just generally, we'll  
19   get into it in more detail, but generally speaking what  
20   method did you choose to use?

21          A       The best thing to do would be to show people  
22   a pair of pictures and let them rate these pictures on  
23   various points, and ask their comparison. And well we  
24   wished to avoid, to eliminate as many variables as  
25   possible.

26                I didn't want to show a current good looking

AT

JNR-001212



717

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Anastas - Direct - Murray

1

2 glamorous club against one of the more tawdry poorly  
3 signed tacky clubs because there would be a difference  
4 in overall architecture and so forth.

5 I wanted to eliminate all the variables around the  
6 issue of presentation, so we decided I decided to show  
7 the same club as if it were before signage and  
8 presentation had been as I said cleaned up, and after as  
9 it is now subdued.

10 Q Did you decide to use the street intercept  
11 method or some other method of questioning respondents?

12 A No, it seemed like a simple thing to show New  
13 Yorkers a pair of pictures and have them self administer  
14 the questionnaire. I thought it was important to have  
15 them self administer the study so that there would be no  
16 bias from the tone of voice of the interviewer and so  
17 forth.

18 Q Okay, we'll get into the details in a minute,  
19 but did you, in fact, perform such a study?

20 A Yes.

21 Q And did you record the results of such a  
22 study?

23 A Yes.

24 Q And did you conduct the study in accordance  
25 with accepted principles in your industry with respect  
26 to gathering this type of information?

AT

JNR-001213

1200

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1                   Anastas - Direct - Murray

2           A       Yes.

3           Q       I want to show you what has been marked for  
4 identification as Plaintiff's Exhibit 12.

5                   (Whereupon, Plaintiff's Exhibit 12 was  
6 marked for Identification at this time.)

7           Q       Mr. Anastas, can you please identify what  
8 Plaintiff's Exhibit 12 is, this document?

9           A       This is a traditional market research report  
10 based on the findings of the study.

11          Q       And of the study that you and I have just  
12 been talking about that you did in New York City?

13          A       Yes, I'll read the title. "The perceived  
14 differences between adult entertainment clubs with  
15 subdued facade versus loud facades."

16          Q       And when did you perform this research, what  
17 date?

18          A       November 16 and 17 in 2006.

19                   MR. MURRAY: Your Honor, at this time  
20 before asking further questions about the content  
21 of this document, I would move Plaintiff's Exhibit  
22 12 into Evidence.

23                   MS. NEUFELD: Your Honor, defendants  
24 object to portions of this document for the same  
25 reasons we objected to the other documents. Those  
26 portions which simply set forth the numbers and the

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JNR-001214

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Anastas - Direct - Murray

1  
2 results of the study we don't object to. But to  
3 the extent that in the --

4 THE COURT: You don't object to that?

5 MS. NEUFELD: We don't object to that.  
6 We object to the portions which state the witness'  
7 opinion about what those results mean which are  
8 interspersed.

9 THE COURT: Why would his opinion be  
10 objected to?

11 MS. NEUFELD: It's an out of Court  
12 statement in this document.

13 THE COURT: He is an expert.

14 MS. NEUFELD: He hasn't been qualified  
15 as an expert.

16 THE COURT: He's been doing this stuff  
17 for about, what did you say?

18 THE WITNESS: Forty.

19 THE COURT: Forty years.

20 MS. NEUFELD: It's still an out of Court  
21 statement.

22 MS. BINDER: It's the same objection we  
23 had yesterday, your Honor, to the report yesterday.

24 THE COURT: He's here to be  
25 cross-examined on this. Therefore, it should be  
26 marked in evidence.

AT

JNR-001215

1202

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1                   Anastas - Direct - Murray

2                   (Whereupon, Plaintiff's Exhibit 12 was  
3 marked in Evidence at this time.)

4                   MR. MURRAY: Thank you, your Honor.

5           Q       Mr. Anastas, you mentioned before that the  
6 survey was going to include showing pictures to the  
7 respondents; correct?

8           A       Correct.

9           Q       And how did you create the pictures that you  
10 were going to show the respondents?

11          A       We took pictures of three different clubs.  
12 Instead of just using one club, I wanted to be fair and  
13 make it as objective and as possible. So I had the  
14 photographer take a picture of three existing clubs, and  
15 showed only one club to each respondent.

16          Q       Now I want to show you what's been marked for  
17 identification as Plaintiff's Exhibits 12A, 12B and 12C.

18                   THE COURT: 12A, B and C; right?

19                   MR. MURRAY: Yes, your Honor.

20                   THE COURT OFFICER: They are each a two  
21 page document.

22                   THE COURT: Staple them.

23                   MR. MURRAY: They are stapled.

24                   THE COURT OFFICER: They are all photos.

25                   THE COURT: Why don't you show them to  
26 counsel and see if they don't object to them going

AT

JNR-001216

1203

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Anastas - Direct - Murray

into evidence.

MR. MURRAY: We have, your Honor, a long time ago.

(Whereupon, Plaintiff's Exhibit 12A, 12B, and 12C, were marked for Identification at this time.)

Q Mr. Anastas, I've put in front of you what has been marked as Plaintiff's Exhibit 12A, B and C. I hope I've marked these correctly. If I haven't I'm sure you'll correct me. Can you identify the exhibits that are now in front of you, the photographs?

A Yes. There are two pictures of each club. On the first page is a picture of the club on the top with signage and presentation that echos how they may have looked years ago, and the picture below on the first page is exactly how it looks today.

On the second page they are the same two pictures but they are flipped because we wanted to avoid order bias.

So among those people that were shown this club, half were shown the pictures 201 and 101. And the other half were shown pictures 101 and 201 so that there was no order bias. Is that clear? It's a little complicated to explain.

Q I think it is. And then the next two

AT

JNR-001217

1204

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1 Anastas - Direct - Murray

2 photographs are of the other clubs?

3 A Yes, the second one is called Frills and the  
4 third one is Winners. Frills and Winners.

5 Q Now with respect to the what we're calling  
6 the loud facade?

7 A Yes.

8 Q Are you familiar -- how long have you lived  
9 in New York by the way?

10 A I've worked in New York City since 1959. And  
11 I've lived in the New York area since then.

12 Q And are you familiar yourself as a result of  
13 that with the signage that was prevalent for some of the  
14 adult establishments in the 1990's?

15 A Yes. Yes, for many years I had an office on  
16 45th Street and I would head towards Times Square and  
17 beyond for meals and theatre, and I was aware of the  
18 many clubs in that area and how they presented  
19 themselves.

20 Q And with respect to the loud facades that you  
21 depicted in these photographs, how did they compare with  
22 the signage that you observed back in the '90's?

23 A On the whole I think the presentations that  
24 we showed are somewhat subdued to what I recall.

25 Q Do you recall seeing signs that had the kind  
26 of depictions of topless, triple X, girls girls girls,

AT

JNR-001218

1205

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Anastas - Direct - Murray

1  
2 that kind of things on signage?

3 A Yes.

4 MS. BINDER: Your Honor, I'm confused  
5 about something. Are these photographs in evidence  
6 or not in evidence? Because we're talking about  
7 them and I don't think they have been offered.

8 THE COURT: I don't remember them being  
9 offered.

10 MR. MURRAY: Your Honor, I'll just point  
11 out that they are actually the same photographs in  
12 a much smaller form are at the end of Plaintiff's  
13 Exhibit 12. And I should have told the Court that  
14 this is just so that it's easier to see them. And  
15 I would move into evidence 12A, B and C so that we  
16 don't have to look at such small ones at the tail  
17 end of this report, this survey.

18 THE COURT: Any objection?

19 MS. BINDER: Well, your Honor, what we  
20 would have done is voir dire on the photographs and  
21 then I suppose we can move to strike.

22 THE COURT: He's offering them now. You  
23 can have your voir dire.

24 MS. BINDER: Why don't we do that, your  
25 Honor.

26 THE WITNESS: Nice to see you again.

AT

JNR-001219



724

585

1                   Anastas - Voir Dire - Neufeld

2                   MS. NEUFELD: Nice to see you again too

3                   Mr. Anastas.

4                   VOIR DIRE EXAMINATION

5                   BY MS. NEUFELD:

6                   Q       Now for the study that you conducted, you  
7                   used photographs which purported to depict the facade of  
8                   three clubs that were in operation as 60/40 clubs in the  
9                   fall of 2006?

10                  A       Yes.

11                  Q       And those are the documents that we're  
12                  talking about now 12A, B and C for Identification?

13                  A       Yes. Since we had these brighter colored  
14                  photos it seemed they were more clear than the photos  
15                  you've had in the research report that was entered  
16                  previously.

17                  Q       Okay, so now in each pair of photos, one  
18                  photograph purports to show a facade virtually identical  
19                  to that which existed outside a 60/40 club in 2006;  
20                  right? So one of these purports to look exactly like a  
21                  60/40 club that existed in 2006?

22                  A       2006, yes.

23                  Q       So in 12A that's 101, in 12B that's 301, and  
24                  in 12C that's 501?

25                  A       Correct.

26                  Q       Okay, now to create those three photos that I

AT

JNR-001220

1207



725

586

1 Anastas - Voir Dire - Neufeld

2 just mentioned, you took an actual photo of a club  
3 operating as a 60/40 topless club and digitally changed  
4 the name to a fictitious name; right?

5 A Correct.

6 Q The other half in each pair is a computer  
7 modified photo of the facade of the same club; right?

8 A Correct. You could use the common expression  
9 photo shopped.

10 Q Photo shopped, okay, good. I'm familiar with  
11 that expression. And the photo shopping or the  
12 modification that was done was to make the establishment  
13 have a louder facade?

14 A Correct.

15 Q And what you mean by louder facade is a  
16 facade with signage and graphics that you think are  
17 consistent with the appearance of most topless clubs  
18 prior to their conversion to 60/40?

19 A Correct.

20 Q And your knowledge about what the signs  
21 looked like came primarily from representations made by  
22 counsel for Pussycat as to what the pre 1998 signs  
23 looked like; right?

24 A Incorrect. Part of it comes from my  
25 recollection as a resident, I mean as a business person  
26 in New York for many years.

AT

JNR-001221

1208

726

587

1                   Anastas - Voir Dire - Neufeld

2           Q       But you don't have any recollection of what  
3 any specific pre 1998 signs looked like, right?

4           A       I did not have any photographs of those  
5 preexisting clubs.

6           Q       You didn't have any photographs. And you  
7 have no specific recollection yourself of what actual  
8 clubs, what specific clubs looked like; right?

9           A       I don't know how to answer that.

10          Q       Well, let me ask you this, do you recall --

11          A       If you could reach the point you are trying  
12 to make I might understand.

13          Q       I'm going to ask you do you recall coming to  
14 my office and having your examination before trial  
15 taken?

16          A       Of course. And I think at that time I gave  
17 you these pictures.

18          Q       Right.

19                   MR. MURRAY: Your Honor, I'm going to  
20 object. I think all the witness has said is that  
21 he doesn't currently understand the question. I  
22 don't know how he could be confronted with prior  
23 testimony.

24                   THE COURT: What if the same question  
25 was asked of him and he understood it.

26                   MR. MURRAY: It wouldn't change the fact

AT

JNR-001222

727

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Anastas - Voir Dire - Neufeld

that currently he's not completely understanding what counsel is asking.

THE COURT: It goes to credibility. Go

ahead.

Q You were asked the following question on page 30 at line 17, actually the first two words are not a question, it's a comment, but it says, "Question:

That's all. I know you went to see what the signs looked like now. I just want to know if you ever saw what the signs looked like before? Answer: Yes, but I have only a vague recollection."

Do you recall being asked that question?

A I said that, that's my answer.

Q Okay. So you have a vague recollection of what signs looked like prior to 1998 and you were told things by counsel for the plaintiffs about what signs looked like; correct?

A Correct.

Q And you weren't shown photographs of actual pre 1998 signs; right?

A Correct.

Q And you didn't visit any of the specific clubs that you used prior to 2002; right?

A That's correct, yes.

Q And you never even went to a topless bar in

AT

JNR-001223

1210

728

589

1                   Anastas - Voir Dire - Neufeld

2   New York City before 1998; right?

3           A       I actually don't recall. I never -- I can't  
4   say I never went into one, I think I might have walked  
5   into one, but I don't recall.

6           Q       At that same deposition, Mr. Anastas, do you  
7   recall on page 26 line 17 being asked the following  
8   question and giving the following answer. "Question:  
9   So you never went to a topless bar in New York City  
10   before 1998; is that fair to say? Answer: Yes."

11          A       That's my answer.

12          Q       Okay. So based upon what you were told and  
13   your vague recollection what you saw, you designed  
14   louder facade with signs that say things like "Girls,  
15   Girls, Girls", "X X X", right?

16          A       No. In actual fact I'm aware of clubs around  
17   New York that did not modify their signage and did not  
18   soften their presentation and they still have salacious  
19   and loud signage in various ways around New York.

20          Q       Which clubs are those?

21          A       I don't have a list of them. I can get it  
22   for you if you would like.

23               There are non-conforming clubs in New York,  
24   correct?

25          Q       I'm asking the questions today. We can talk  
26   about it some other time.

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JNR-001224

1211

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Anastas - Voir Dire - Neufeld

1

2           Okay, the louder the signs in these photographs  
3 aren't actual signs, right, they are digitally created  
4 images of signs?

5           A       Yes.

6           Q       And you created these loud facades to be as  
7 garish as possible so as to provide a noticeable  
8 contrast between the two photos between each pair; isn't  
9 that fair to say?

10          A       Yes.

11          Q       And the loud facade signs that you created,  
12 they didn't come from anyone particular example of an  
13 adult establishment; right?

14          A       That's correct. I cannot take you to a club.

15          Q       Each facade was created by compiling examples  
16 of signs that come from many establishments; and it's  
17 more or less a composite of graphics taken from  
18 establishments and you put them onto one establishment?

19          A       Yes, that's fair.

20          Q       Each loud facade photo has a sign that says,  
21 "Open 24 hours", right? Two cases it's neon, that's on  
22 12A and 12B, and on 1C it's not in neon but it still  
23 says "Open 24 hours"?

24                   THE COURT: What was the question about

25                   24 hours?

26          Q       They all have signs that say "Open 24 hours".

AT

JNR-001225

1212

730

591

1 Anastas - Voir Dire - Neufeld

2 That's right, isn't it?

3 A Yes, two of the -- I don't see it on the  
4 third one.

5 Q On the third one on photo 601?

6 A Oh, yes. Now I see it, yes, yes.

7 Q So do you know if bars that sell alcohol in  
8 New York City are permitted to remain open 24 hours?

9 A No.

10 Q Did you attempt to ascertain that information  
11 before you designed the facade photos?

12 A No.

13 Q Okay, let's look at some of the specific  
14 photos that you made. Exhibit for identification  
15 Plaintiff's 12A, photos 101 and 102. They depict a  
16 fictitious club called "Player", right?

17 A Are you talking about 12A?

18 Q Yes?

19 A And those are pictures 101 and 201?

20 Q Yes?

21 A Not 102?

22 Q Sorry, I misspoke.

23 MR. MURRAY: Your Honor, I would move to  
24 strike the answer and question two or three ago.  
25 I apologize for being so late. She asked whether  
26 or not the witness was aware that alcohol

AT

JNR-001226

1213

729

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Anastas - Voir Dire - Neufeld

1  
2 Okay, the louder the signs in these photographs  
3 aren't actual signs, right, they are digitally created  
4 images of signs?

5 A Yes.

6 Q And you created these loud facades to be as  
7 garish as possible so as to provide a noticeable  
8 contrast between the two photos between each pair; isn't  
9 that fair to say?

10 A Yes.

11 Q And the loud facade signs that you created,  
12 they didn't come from anyone particular example of an  
13 adult establishment; right?

14 A That's correct. I cannot take you to a club.

15 Q Each facade was created by compiling examples  
16 of signs that come from many establishments, and it's  
17 more or less a composite of graphics taken from  
18 establishments and you put them onto one establishment?

19 A Yes, that's fair.

20 Q Each loud facade photo has a sign that says,  
21 "Open 24 hours", right? Two cases it's neon, that's on  
22 12A and 12B, and on 1C it's not in neon but it still  
23 says "Open 24 hours"?

24 THE COURT: What was the question about

25 24 hours?

26 Q They all have signs that say "Open 24 hours".

AT

JNR-001227

1214



730

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1                   Anastas - Voir Dire - Neufeld

2       That's right, isn't it?

3           A       Yes, two of the -- I don't see it on the  
4       third one.

5           Q       On the third one on photo 601?

6           A       Oh, yes. Now I see it, yes, yes.

7           Q       So do you know if bars that sell alcohol in  
8       New York City are permitted to remain open 24 hours?

9           A       No.

10          Q       Did you attempt to ascertain that information  
11       before you designed the facade photos?

12          A       No.

13          Q       Okay, let's look at some of the specific  
14       photos that you made. Exhibit for identification  
15       Plaintiff's 12A, photos 101 and 102. They depict a  
16       fictitious club called "Player", right?

17          A       Are you talking about 12A?

18          Q       Yes?

19          A       And those are pictures 101 and 201?

20          Q       Yes?

21          A       Not 102?

22          Q       Sorry, I misspoke.

23                   MR. MURRAY: Your Honor, I would move to  
24       strike the answer and question two or three ago.  
25       I apologize for being so late. She asked whether  
26       or not the witness was aware that alcohol

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dispensing places cannot stay open 24 hours a day. That is not correct. There are certain hours as I understand it during which --

THE COURT: She can ask the question though. He can give the answer if he knows it.

MR. MURRAY: He said he didn't know. The question was improper because it assumes something.

THE COURT: So what? You didn't get an answer, so it's not evidence.

MR. MURRAY: Thank you, your Honor.

Q So Player in the photos 101 and 201 purports to be the VIP Club located on West 20th Street in Manhattan, right?

A I'm sorry, the word "purport".

Q Because it's called Player instead of VIP, so it's not actually the VIP?

A It's not purporting to be, it was based on.

Q Okay, was based on the VIP Club in Manhattan?

A I think there is a difference.

THE COURT: What was based on the VIP Club, the 201?

THE WITNESS: Yes.

Q Let me take you back. Photo 101 looks like the way the outside of the VIP club looks today except

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1                   Anastas - Voir Dire - Neufeld

2       that the word VIP Club was replaced with the word  
3       Player, right?

4           A       Exactly, correct.

5           Q       And photo 201 is a digitally created image of  
6       what VIP could have looked like prior to 1998; right?

7           A       I'd like to think of it as an example of the  
8       kinds of clubs that were in existence in Manhattan at  
9       the time that the changes were formulated. There is a  
10      difference.

11          Q       Okay, but 101 looks like the outside of VIP  
12      today except for the name, and 201 is a digitally  
13      created image?

14          A       Correct.

15          Q       Okay, now among the digitally created images  
16      on photo 201 are two neon signs saying "Adult" one sign  
17      saying "Topless" with neon "X X X" below it and a neon  
18      "Girls, Girls, Girls" sign "Must be 21 to enter" sign  
19      and a neon "Open 24 hours" sign; right?

20          A       Yes.

21          Q       And these are not depictions of the actual  
22      signs that were on the facade of the VIP Club prior to  
23      1998; right? These signs weren't actually on the VIP  
24      Club?

25          A       We had never said we were showing what the  
26      VIP Club might have looked like in the pass.

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1 Anastas - Voir Dire - Neufeld

2 Q So you don't know if the VIP Club actually  
3 had a sign saying "Adult"?

4 A I consider the question irrelevant, but I  
5 can't say so because I'm a witness.

6 Q But I still need you to answer my question?

7 A Ask it again?

8 Q Okay, you don't know if the VIP Club actually  
9 had a neon sign actually saying "Adult", right?

10 A No, I don't know.

11 Q And you don't know if the VIP Club actually  
12 had a neon sign saying "Girls, Girls, Girls"; right?

13 A Correct.

14 Q You don't know if VIP Club actually had a  
15 sign saying "Topless X X X", right?

16 A That's right.

17 Q And you don't know what the VIP facade looked  
18 like prior to 1998, right?

19 A If it existed.

20 THE COURT: I didn't hear the answer?

21 A If it existed. I didn't even know if it  
22 existed.

23 Q And if it even existed you have no evidence  
24 that the pre 1998 VIP facade looked the way that Player  
25 is depicted in 201; right?

26 A Right.

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1 Anastas - Voir Dire - Neufeld

2 Q Now let's look at photos 301 and 401 which  
3 are 12B. Now these photos depict a club called Frills;  
4 right?

5 A Right.

6 Q And Frills is based upon a club called Lace  
7 which is located on Seventh Avenue in Manhattan?

8 A Correct.

9 Q And the photo in 301 is the actual outside of  
10 Lace with the name changed to Frills?

11 A Correct.

12 Q And in 401 you took the same outside of Lace  
13 and digitally created images and put them on the facade;  
14 right?

15 A That's right.

16 Q And among those digitally created images are  
17 hanging neon signs which say "Adult" and "Open 24 hours"  
18 a sign saying "Topless, must be 21 years old to enter" a  
19 neon "X X X" sign, and a neon "Girls, Girls, Girls"  
20 sign; right?

21 A Yes.

22 Q And those digitally created images in photo  
23 401 are not depictions of the actual signs that were on  
24 the facade of Lace prior to 1998; right?

25 A I don't know.

26 Q Well, Lace didn't even exist prior to 1998;

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Anastas - Voir Dire - Neufeld

1  
2 right?

3 A I don't have their contract in my hand.

4 Q Okay, so you don't know if the pre 1998  
5 facade actually had a hanging neon sign saying "Adult";  
6 do you?

7 A No.

8 Q And you don't know if the pre '98 facade  
9 actually had a hanging neon sign saying "Open 24 hours";  
10 right?

11 A Correct.

12 Q And you don't know if the pre '98 facade  
13 actually had a neon sign saying "Girls, Girls, Girls"?

14 A Correct.

15 Q You don't know whether the pre '98 facade  
16 actually had a neon sign saying "Topless X X X"?

17 A Correct.

18 Q And you have no evidence that the pre 1998  
19 facade looked the way that Frills is depicted in photo  
20 401; right?

21 A Right.

22 Q Let's look at pictures 501 and 601 which is  
23 exhibit 12C.

24 THE COURT: With regard to 501, would  
25 your answers to the same questions that you  
26 answered to 12A and 12B be the same here?

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1 Anastas - Voir Dire - Neufeld

2 THE WITNESS: Exactly.

3 THE COURT: That's it.

4 Q Now your purpose of the study here was to  
5 determine whether the change to lower profile signage on  
6 clubs would have a significant impact on how people  
7 perceived the quality of life in a neighborhood in which  
8 the businesses operated; right?

9 MR. MURRAY: Your Honor, I'm going to  
10 object. This is a voir dire I thought just of the  
11 photographs. I haven't completed my direct. This  
12 sounds like the cross now that should be done when  
13 I am done with my direct.

14 THE COURT: I'm not so sure. Are you  
15 still in the voir dire stage about the  
16 admissibility of these photographs?

17 MS. NEUFELD: I am, your Honor, because  
18 what I am going to be arguing in a moment is that  
19 the entire study is based solely on these  
20 photographs, and these photographs depict nothing  
21 about what clubs actually looked like in New York  
22 City prior to 1998.

23 THE COURT: Okay, I'm going to allow her  
24 to continue.

25 MR. MURRAY: Okay.

26

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Anastas - Voir Dire - Neufeld

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2 BY MS. NEUFELD:

3 Q Mr. Anastas, the purpose of your study was  
4 whether the change to lower profile signage that used to  
5 exist on a hundred percent clubs, topless clubs, prior  
6 to 1998, the change to the more subdued facade would  
7 have had a significant impact on how people perceived  
8 the quality of life in a neighborhood in which the  
9 businesses operated; right?

10 A Correct.

11 Q And the way you went about finding the answer  
12 to this question was to ask New York City residents  
13 questions about the photos we've just discussed?

14 A Correct.

15 Q Other than asking New York City residents  
16 questions about the photos, you didn't do anything else  
17 to try to ascertain whether change to lower profile  
18 signage would have had a significant impact on  
19 neighborhood quality of life, do you?

20 A Could you restate the question?

21 Q So the whole study that you conducted was  
22 just asking residents of New York City questions about  
23 the photographs we just discussed?

24 A Yes.

25 Q You didn't do anything else to try to answer  
26 the question about changes and perception to quality of

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Anastas - Voir Dire - Neufeld

life in a neighborhood?

A No.

Q Okay.

MS. NEUFELD: Your Honor, defendants move to, one, exclude these photographs; and, two, actually exclude and strike what has been admitted into evidence as Exhibit 12.

The photographs used in the study are entirely fictitious, they have no basis in reality. The witness testified that he has absolutely no evidence of what Lace, VIP and actually Scores is the club in 501 and 601 looked like before 1998.

Mr. Iulo testified on our case that he never saw signs saying "Adult" or "Open 24 hours". Mr. Kremer, the owner of the Pussycat, testified that pre and post 1998, the signs outside his premises were only on the awning, and they were never any bigger than they were today.

We read in testimony from Paul Coppa, the former owner of Ten's, that the signs outside Ten's remained the same as pre and post 1998. Mr. D'Amico testified this morning that Vixen never had neon signs, the results of a study that are based upon fictitious photos simply has no relevance here, and we move that the entire study

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Anastas - Voir Dire - Neufeld

should be excluded.

MR. MURRAY: May I respond, your Honor?

THE COURT: Yes.

MR. MURRAY: It seems to me the City misses the whole point of this study. The point of this study is very simple. We have evidence from this witness, from Mr. D'Amico, meaning could be corroborated by Mr. Iulo, by Mr. Davis, that there was a time when the signage for adult nightclubs was extremely garish, was very loud, was eye popping, sensational, and had the very features that are contained in the examples that this witness used as a basis for comparison.

THE COURT: Let me ask you this, there is no single club that has all of the features itself with regard to, you know, the more garish recreation.

MR. MURRAY: We think that the testimony of Mr. D'Amico is to the effect that there were clubs that had all of those things. In fact, worse. And this witness testified --

THE COURT: How could he know that if he is not even familiar with the clubs that he's talking about, that you are talking about.

MR. MURRAY: Well, he said he knew it

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1                   Anastas - Voir Dire - Neufeld

2                   from having seen it.

3                   THE COURT: I didn't hear him say that  
4                   any of these were an actual, the actual. I'm  
5                   talking about the recreations. The computer  
6                   simulations, whatever want to call them.

7                   He didn't say that there were any one of  
8                   them had the same -- that any club in the '90's  
9                   that he knows of had all of these features, that's  
10                  my impression.

11                  MR. MURRAY: Well, I understood him to  
12                  say --

13                  THE COURT: Why don't you ask him?

14                  MR. MURRAY: I think I did, your Honor,  
15                  and I think he indicated that he saw signs that  
16                  were even more --

17                  THE COURT: I'm not asking, I'm talking  
18                  about the signs in this photograph, not that are  
19                  outside the photograph. Is there any particular  
20                  club that he saw that had all of these features on  
21                  the simulation?

22                  MR. MURRAY: Let me ask this witness  
23                  whether he ever observed such a club.

24                  THE COURT: Go ahead.

25                  Q       Have you ever observed such a club?

26                  A       I'm a prickly liberal individual, and I

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602

1 Anastas - Direct - Murray

2 believe people should be allowed to pursue their own  
3 pleasures however they see fit. But I recall clubs in  
4 Manhattan in midtown where there were barkers outside  
5 luring passersby with promise of sexual favors and great  
6 offense to the sensibility of people.

7 Q The question is, sir, did you see any signs  
8 that had all of these features, not barkers, can you  
9 answer that question?

10 A I cannot say that I saw a facility that had  
11 these particular signs except for the ones where we  
12 photographed them and brought them into play here. I  
13 have such a picture here. And it has a whole bunch  
14 of -- it's from a different kind of current club and I'd  
15 be happy to show it.

16 Q Let's see it.

17 THE COURT: Here counsel. We'll need it  
18 marked. Mark it as what?

19 MR. MURRAY: 12D, your Honor.

20 (Whereupon, Plaintiff's Exhibit 12D was  
21 marked for Identification at this time.)

22 THE COURT: Let's deem it moved in  
23 evidence so that you can complete your voir dire.

24 BY MR. MURRAY:

25 Q So if I understand what you are saying, 12D  
26 is an illustration of one of the clubs that was used to

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1                   Anastas - Direct - Murray

2       create the composite?

3           A       It's a pleasure facility in New York. It  
4       shows "Live girls", "Girls, Girls, Girls", in the  
5       various features of that facility.

6           Q       Does it have the triple X?

7           A       I can't see it right here. No, it doesn't.  
8       But neighboring clubs did. I don't have pictures of all  
9       the places that we stole graphics from.

10                   THE COURT: Do you want to voir dire on  
11       this.

12                   MS. NEUFELD: Yes, please, your Honor.

13       VOIR DIRE

14       BY MS. NEUFELD:

15           Q       Mr. Anastas, when did you take that photo?

16           A       It was taken in 2006.

17           Q       Was it taken by you?

18           A       No.

19           Q       Who was it taken by?

20           A       The graphic designer was sent out to get  
21       graphics to use for the study so that we could make the  
22       comparison.

23           Q       Is the establishment depicted in that photo a  
24       club that serves alcohol or food and features topless  
25       entertainment?

26           A       It features topless entertainment, but does

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1 Anastas - Voir Dire - Neufeld

2 not serve alcohol.

3 Q Is it an eating or drinking establishment?

4 A I don't believe so, no.

5 Q Is it, in fact, a book store that has  
6 peepshows in it?

7 A Yes.

8 MS. NEUFELD: Your Honor, this document  
9 is completely irrelevant. This case is about  
10 topless clubs, not book stores.

11 THE COURT: But he said it was topless.

12 MS. NEUFELD: It's about a book store  
13 that has peepshows.

14 THE COURT: It says "Live girls".

15 MS. NEUFELD: It's a peepshow place.

16 THE COURT: It says "Live girls".

17 THE WITNESS: "Girls, Girls, Girls."

18 THE COURT: I don't see "Girls, Girls,  
19 Girls."

20 THE WITNESS: In the middle there.

21 THE COURT: Oh, yeah, it says, "Girls,  
22 Girls, Girls. Live."

23 Well, whether it's a topless or not,  
24 it's a legitimate photograph, is it not.

25 THE WITNESS: Yes.

26 THE COURT: Okay, it's an illustration.

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1                   Anastas - Voir Dire - Neufeld

2           it's a reasonably similar illustration for his  
3           study for the point that he wishes to find out  
4           about as to whether or not the reactions of people  
5           on the street are the same or different for these  
6           photographs.

7                   I'm going to allow it. I'm going to  
8           allow them all into evidence.

9                   MS. NEUFELD: The whole study? The  
10          whole study is based on a fiction. That isn't a  
11          topless club.

12                  THE COURT: I understand that it's based  
13          on proving a particular point, not necessarily that  
14          it's proving a point about anything that existed  
15          but if it did, if it does, it's a valid point as  
16          far as I'm concerned.

17                  Whether it's true or not, it's a  
18          reasonable example of his point which is trying to  
19          show whether or not there is any contrast between  
20          the subdued clubs, and the more garish ones. I  
21          will allow it into evidence.

22                  (Whereupon, Plaintiff's Exhibit 12D was  
23          marked in Evidence at this time.)

24                  THE COURT: Let's take a break.

25                  (Brief recess.)  
26

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Anastas - Direct - Murray

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BY MR. MURRAY:

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5

Q Mr. Anastas, you formulated some questions I take it for the survey that you were going to undertake; is that correct?

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A Yes.

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Q And what were the rules in a sense that you followed to make sure that the questions were good as opposed to bad questions in your field?

A Well, we drafted the questions to get at the issues issue of quality of life. And we asked, we had them in different levels, overall quality of life and someplace people would like to live near or they thought other people would like to live near. And whether or not the district would be some place they would go shopping.

The exact language of the questions was consulted with Professor Paul, Bryant Paul of Indiana who helped in correcting the language and the style of the questions so that it would be as objective and get at the answer in the best possible way because we knew that it would be in evidence and we wanted to make sure that it was done properly.

Q And then once you had the questions agreed upon and you had the pictures, what exactly did you do to actually conduct the survey? Did you hire a group of

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1                   Anastas - Direct - Murray

2   people?

3           A       Yes, the most important variable was getting  
4   the right people to distribute the picture and  
5   questionnaire to each respondent.

6           I hired a contractor who is used to hand out  
7   samples in city streets or to do other kinds of group  
8   work. And he had a team assembled for me that I met  
9   with and gave them the rules of how I wanted this  
10   conducted. Most of the individuals are about to be  
11   actors and actresses.

12          Q       And then did you have a goal as to how many  
13   respondents?

14          A       Yes, I wanted to have a total of  
15   approximately 400, and I told the interviewers or the  
16   people handing out the questionnaires to be as energetic  
17   as they could. And they ended up achieving a total of  
18   651 finished interviews.

19          Q       By the way, did you pre test the  
20   questionnaire?

21          A       Yes.

22          Q       What does that mean in your business?

23          A       Well, you are spending a lot of time and  
24   money with a questionnaire that people are going to have  
25   to administer themselves, it's called a self  
26   administered questionnaire.

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1 Anastas - Direct - Murray

2 You want to make sure, you want to make sure that  
3 they understand it. So I showed the questionnaire to a  
4 dozen and a half individuals to see how they reacted to  
5 it.

6 Q By the way one point I think I forgot to make  
7 clear, the three photographs of the three existing  
8 clubs, you changed the names of those clubs and I'm sure  
9 there was a reason for that?

10 A Yes. I mean some of these are very well  
11 known and I felt that would bias it. So I obscured the  
12 name calling VIP Player, and Lace Frills, and Scores  
13 Winners.

14 Q That was to diminish any bias from people  
15 recognizing the name of the club?

16 A A couple of the interviews picked up the  
17 questionnaire and says, "Oh that looks like Scores", but  
18 it didn't make a difference.

19 Q Now the test was administered over what  
20 period of time?

21 A Two days.

22 Q What dates?

23 A November 16 and 17.

24 Q And where did you instruct the people to go  
25 do the test?

26 A I knew that we couldn't use the tickets line

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1                   Anastas - Direct - Murray

2       which I liked so much because that's out of towners. I  
3       wanted this to be all New Yorker's.

4           So we knew there were great concentrations of  
5       people in Bryant Park behind the library, Union Square,  
6       and I wanted to get some geographic dispersion. So I  
7       sent a team out to Brooklyn and they found a pedestrian  
8       mall on Flatbush.

9           Q       Anyplace else?

10          A       No.

11          Q       Okay, now would you turn to page 21 of  
12       Plaintiff's Exhibit 12, please?

13          A       Yes.

14                   THE COURT: 12A, B or C?

15          Q       Just 12, your Honor. I want you to go at the  
16       bottom rather than look at the summary. I'd ask you to  
17       read the first question at the bottom that you actually  
18       posted to the respondents. What question is that?

19          A       "Based only on these pictures, which of the  
20       immediately surrounding neighborhoods do you think is  
21       more likely to have a better all quality of life."

22          Q       Let's go to the next page. We won't do this  
23       with every question, but just so we understand how these  
24       results are tabulated, what was the result of that  
25       question?

26          A       "Out of 650 of people answering it 68 percent

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1 Anastas - Direct - Murray

2 said that the subdued facade neighborhood would be much  
3 more likely or somewhat more likely to have a better  
4 overall quality of life."

5 Q And then in the chart on that page can you  
6 briefly explain how we're supposed to interpret the  
7 various columns?

8 A Yes, let me simplify it. The chart we're  
9 talking about is in this document on numbered page 22 on  
10 the bottom. The first column is the total of those  
11 interviewed. It's headed 651, a hundred percent.

12 The next three columns are the results of the  
13 different clubs. The Players Club, Frills Club and  
14 Winners Club. The next two columns are by gender, and  
15 the last two columns are by age.

16 Q Now then go to the next page, what was the  
17 second question that the respondents were asked to  
18 answer?

19 A "Question number two is based only on these  
20 pictures. In which neighborhood do you think it would  
21 be safer to walk down the street?"

22 Q And what was the result of that?

23 A Looking at the first column you could see  
24 among the total sample of 650, 64 percent made a  
25 positive response for the subdued facade, that it would  
26 look much safer of somewhat safer.

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1                   Anastas - Direct - Murray

2           Q       What was the third question that was posted  
3 to the respondents?

4           A       "Suppose you live in or near each of these  
5 two neighborhoods, based only on these pictures in which  
6 neighborhood do you think you would prefer to continue  
7 living?"

8           Q       And what was the result?

9           A       Among the total, 63 percent said they would  
10 prefer to continue living much more or somewhat more in  
11 the subdued facade neighborhood.

12          Q       And then question four, what was that?

13          A       "Based only on these pictures, in which  
14 neighborhood do you think the average person would  
15 prefer to continue living?"

16          Q       And what was the result of the question?

17          A       And in the total column, this is on page 25  
18 of the report, the total column for subdued facade  
19 63 percent said they would, they think the average  
20 person would much more prefer or somewhat more prefer.

21          Q       And then the final question you asked was  
22 what?

23          A       "Based only on these pictures and assuming  
24 all of the stores in each neighborhood were exactly the  
25 same, in which of these two neighborhoods do you think  
26 you would be more likely to go shopping?" And in the

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1                   Anastas - Direct - Murray

2           total column 59 percent said they would prefer the  
3           subdued facade neighborhood.

4                   MR. MURRAY: Thank you. I have nothing  
5           further.

6                   THE COURT: Cross-examination?

7                   MS. NEUFELD: Yes, your Honor.

8           CROSS-EXAMINATION

9           BY MS. NEUFELD:

10           Q       Mr. Anastas, on the second page of Exhibit 12  
11           which actually says page 13, at the bottom, the second  
12           paragraph or the first paragraph says, "Focus Probe,  
13           Inc. Focus Probe was commissioned to conduct market  
14           research by the lawyer representing Pussycat Lounge and  
15           others in cases pending in the Supreme Court for the  
16           State of New York."

17                   And then in the second paragraph it says, "Focus  
18           Probe was informed that Pussycat Lounge and many similar  
19           businesses originally operated adult cabarets with loud  
20           garish exterior signage, and most if not all of the  
21           interior floor space was devoted exclusively to the  
22           presentation of the form of adult entertainment commonly  
23           known as topless or nude dancing."

24                   Right, that's what it says?

25           A       Yes.

26           Q       Then it says, "Focus Probe was further

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613

1                   Anastas - Cross - Neufeld  
2 informed that following certain amendments to the City  
3 zoning resolution Pussycat Lounge and these other  
4 businesses modified their exterior signage and remodeled  
5 their exterior space changing them in two important  
6 respects.

7           "One, modifying the exterior signage so as to  
8 significantly deemphasize or eliminate any ongoing focus  
9 on the topless or nude nature of the entertainment being  
10 presented. And, two, reducing the amount of space  
11 devoted to such adult entertainment to less than  
12 40 percent of the floor space of the preexisting  
13 cabaret, and developing the other 60 percent of the  
14 floor space for a variety of non adult business purposes  
15 not involving topless or nude dancing or other forms of  
16 adult entertainment."

17           Right?

18           A       Correct.

19           Q       That's what you were informed by the  
20 attorneys for Pussycat Lounge?

21           A       As well as reading the New York Times of the  
22 news of these events contemporaneously.

23           Q       Okay, now it doesn't say in here that you  
24 took photographs of examples of signs actually existing  
25 prior to 1998; right?

26           A       Correct.

AT

JNR-001250

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1                   Anastas - Cross - Neufeld

2           Q       And again just very briefly, you used VIP  
3 Club in photos 101 and 201, but you don't know what VIP  
4 Club ever looked like pre 1998; right?

5           A       Correct.

6           Q       And you used in 301 and 401 Lace, but you  
7 don't know what Lace actually looked like prior to 1998?

8           A       Correct.

9           Q       And in 501 and 601, you used Scores, but you  
10 don't know what Scores actually looked like prior to  
11 1998; right?

12          A       Correct.

13          Q       And there is still no actual topless club --  
14 well, first of all, you were provided, you provided  
15 earlier as Exhibit 12D an example for what you used of  
16 signs on a book store called Playpen; right?

17          A       That's one of the places we took pictures of  
18 the signage, yes.

19          Q       Okay.

20          A       There were others, but I don't have them with  
21 me.

22          Q       I direct your attention to that photo for a  
23 moment for, there is nothing hanging down from the  
24 awning in that photo, is there, that's related to the  
25 Playpen establishment?

26          A       No.

AT

1

Anastas - Cross - Neufeld

2

Q And there is no open 24 hour neon sign, is

3

there?

4

A I don't see it, no.

5

Q And there is no X X X neon sign, is there?

6

A Not on this one as there were on others.

7

Q And there is no topless sign, right?

8

A No.

9

Q So there is no actual, and there is still

10

also no evidence of any actual topless club that looked

11

like any of the loud, garish photos depicted in photos

12

201, 401 or 601; right?

13

A Didn't we go over this before?

14

Q We did, I just need you to answer that

15

question and then I'll be done.

16

A Repeat the question.

17

(Record read.)

18

A None has been presented in evidence.

19

MS. NEUFELD: Thank you.

20

THE COURT: Redirect, Mr. Murray.

21

REDIRECT EXAMINATION

22

BY MR. MURRAY:

23

Q Just for the record, Mr. Anastas, in terms of

24

the report, was it Mr. Mehler who hired you initially or

25

myself?

26

A No, I was first contacted by Dan Silver.

AT



1                   Anastas - Redirect - Murray

2           Q       So that was the lawyer you were referring to  
3 in your report?

4           A       Yes.

5           Q       Is it the case, however, that -- do I  
6 understand it to be correct that you yourself have  
7 personally seen garish signs similar to the ones that  
8 you used to convey the loud facade in New York City  
9 yourself?

10          A       Yes. And I could find them today.

11                   MR. MURRAY: Thank you. That's all I  
12 have, your Honor.

13                   THE COURT: Okay. Does that exhaust the  
14 witnesses for today?

15                   MR. MURRAY: Yes.

16                   MS. NEUFELD: Yes.

17                   THE COURT: Okay, sir, you are excused.

18                   THE WITNESS: Thank you, Judge.

19                   THE COURT: Let's go off the record.

20                   (Discussion held off the record.)

21                   THE COURT: Do you have another witness?

22                   MR. MURRAY: We have nothing more to  
23 offer today.

24                   THE COURT: Then the record is closed.

25                   MS. NEUFELD: Thank you, your Honor.

26                   MR. MURRAY: Thank you.

AT

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Anastas - Redirect - Murray

THE COURT: Thank you.

(Whereupon, the case is adjourned until  
March 2, 2009.)

(Continued on page 621.)

\* \* \*

CERTIFIED TO BE A TRUE AND CORRECT  
TRANSCRIPT OF THE FOREGOING PROCEEDINGS.

  
ANGELA TOLAS, OFFICIAL COURT REPORTER

AT

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**PGS. 618-620**  
**OMITTED**

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Transcript of Proceedings dated March 2, 2009 (Pages 757 Through 964)

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: TRIAL TERM PART 2

- - - - - X  
TEN'S CABARET, INC., f/k/a Stringfellow's of  
New York, Ltd., PUSSYCAT LOUNGE, INC., d/b/a  
"Pussycat Lounge," CHURCH STREET CAFE, INC.,  
d/b/a "Baby Doll" and 69-20 QUEENS BLVD., INC.,  
d/b/a "Nickels",

Plaintiffs,

- against -

INDEX NUMBER:  
121197/02

THE CITY OF NEW YORK, MAYOR MICHAEL BLOOMBERG,  
as MAYOR, etc., et al.,

Defendants.

- - - - - X

71 Thomas Street  
New York, New York  
March 2, 2009

BEFORE:

HONORABLE LOUIS B. YORK, Justice

APPEARANCES:

BERKMAN, GORDON, MURRAY & DEVAN, ESQS.  
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BY: J. MICHAEL MURRAY, ESQ., Of Counsel

MEHLER & BUSCEMI, ESQS.  
Attorneys for Plaintiffs  
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New York, New York 10007  
BY: MARTIN P. MEHLER, ESQ., Of Counsel

NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL  
Attorneys for Defendants  
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New York, New York 10007  
BY: ROBIN BINDER, ESQ.,  
SHERYL NEUFELD, ESQ.  
RACHEL K. MOSTON, ESQ., Of Counsel

JNR-001256

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ROBERT E. CHODOS  
OFFICIAL COURT REPORTER

COURT OFFICER: All rise.

THE COURT: Be seated.

Plaintiff.

MR. MURRAY: Thank you, your Honor.

The Plaintiff will call Dr. Lance Freeman.

COURT OFFICER: Come to the podium, please.

Stand in front of the chair.

L A N C E F R E E M A N, Ph.D., residing  
at 560 Riverside Drive, Apartment K, New York, New  
York, 10027, called as a witness by and on behalf of  
Plaintiff herein, having been first duly sworn, was  
examined and testified as follows:

THE WITNESS: Lance F-R-E-E-M-A-N.

560 Riverside Drive, Apartment K, New York,  
New York, 10027.

COURT OFFICER: You may have a seat.

Witness has been sworn.

THE COURT: You may inquire.

MR. MURRAY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MURRAY:

Q Will you please state what your occupation is,  
sir?

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 A I am an Associate Professor of urban planning at  
3 Columbia University here in New York City.

4 Q How long have you been a professor at Columbia  
5 University?

6 A This is my tenth year.

7 Q Tell the Court what your educational background  
8 is?

9 A I have a Bachelor's in business administration  
10 from State University of New York at Buffalo.  
11 Master's degree in city and regional  
12 planning from Chapel Hill, North Carolina Ph.D. in city  
13 and regional planning from University of North Carolina at  
14 Chapel Hill.

15 Q What is city and regional planning?

16 A City and regional planning is a discipline that  
17 deals with the orderly development of urban environment,  
18 for example, it's concerned with development of public  
19 structures such as highways, roads,, development of  
20 housing.

21 It's an attempt to systemically build and  
22 develop urban environment.

23 Q Does that include the issues involving zoning?

24 A Yes.

25 Zoning is one of the tools that is used to  
26 attempt to build a desirable urban environment.

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 Q Prior to becoming professor, what was your  
3 employment history?

4 A I worked at a research consulting firm called  
5 Mathematical Policy Research in Washington, D. C.

6 I also worked as a city manager for the New  
7 York City Housing Authority.

8 And I worked as a budget analyst for the New  
9 York City Department of Environmental Protection.

10 Q What courses have you taught at Columbia  
11 University?

12 A I have taught courses on introduction to  
13 statistics, advanced quantitative method.

14 I have taught research design.

15 I have taught housing policy.

16 I have taught community development policy.

17 And I also have taught thesis workshop and  
18 Ph.D. colloquium.

19 Q What kind of students do you teach?

20 A Graduate students, primarily Master's degree. We  
21 have a Ph.D. program as well.

22 THE COURT: Are all these graduate students  
23 specializing in urban planning?

24 THE WITNESS: Yes.

25 Occasionally I have students from other  
26 programs, law students, business students, public

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 policy students.

3 Primarily they're students in urban planning  
4 at Columbia.

5 Q Tell the Court whether or not you have published  
6 any books?

7 A Yes, I have.

8 I published one book called There Goes The  
9 Hood, Struggles of Gentrification From The Ground Up.

10 Q What year was that book published?

11 A 2006, by Temple University Press.

12 Q Is that book directed to the lay public or--

13 A Temple University is a scholarly press. Its  
14 audience primarily is academician. It's also for the  
15 educated lay public as well.

16 Q Is the book used in universities in courses?

17 A Yes, it is.

18 I am personally aware of several professors  
19 at different universities throughout the country who use  
20 the book that I have spoken to.

21 New York University, for example.

22 Drew University, California State.

23 Northridge would be another example. There are others.

24 THE COURT: Do you use it?

25 THE WITNESS: I also use it.

26 Q I will not ask you how much it costs the students



1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 to buy.

3 What is the general subject matter of that  
4 scholarly book?

5 A The book addresses the issue of gentrification,  
6 which is when predominantly high/low income inner city  
7 neighborhoods start to experience influx of higher  
8 intercom residents and also investment in properties,  
9 upscale properties.

10 The book tries to address how the residents  
11 in the neighborhood are impacted by this type of  
12 neighborhood transformation.

13 Q Have you published any other scholarly articles  
14 in journals?

15 A Yes, I have.

16 I've published a number of peer reviews.

17 Q Approximately, how many articles?

18 A Approximately, 18 or 20. Approximately.

19 Q Do any of those articles have relevance to the  
20 case we are here today on?

21 A Yes.

22 Several articles do deal with the issue of  
23 how various type of land uses affected property values.  
24 So I think that would be germane to this topic.

25 For example, there was an article that looks  
26 at how subsidy housing affects property value.

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 There was an article that I published in  
3 Urban Affairs Review with George Foster and Ron Maleger  
4 (phon), that look at how different investments by Fannie  
5 Mae and Freddie Mac, how they've affected neighborhood  
6 property values.

7 There was another study I looked at, the tax  
8 credit, and how that is related to neighborhood change.

9 Those are examples that I think are germane  
10 to the, to the topic at hand.

11 Q Have you received honors or awards in your  
12 professional career?

13 A Yes, I have.

14 My -- the book won, There Goes The Hood, won  
15 the best book award for the Urban Affairs Association in  
16 2007.

17 I was also selected by the United States  
18 Department of Housing and Urban Development as urban  
19 scholar of the year. I believe it was 2002, around about  
20 that time.

21 Q Now, in addition to your teaching at Columbia  
22 University, do you also occupy any roles with respect to  
23 refereeing in professional journals or roles of that kind?

24 A I do.

25 Some peer review journals, articles select  
26 outside experts to review articles that are submitted for

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 publication, and I have served as a referee on a number of  
3 different peer review journals.

4 Q Are you a member of any professional association?

5 A Yes.

6 The Planning Association in Urban Affairs.

7 Also the National Economics Association.

8 Q Now, Dr. Freeman, did there come a time when you  
9 undertook a study of property values associated with  
10 certain commercial enterprises in the City of New York  
11 known as 60/40 businesses?

12 A Yes.

13 Q Can you tell the Court approximately, when you  
14 did that work?

15 A I was contacted initially in the fall of 2000, I  
16 believe, and so the work was conducted from then until --  
17 I believe it was beginning of 2002, when I completed the  
18 first report.

19 Subsequently, I made revisions to that  
20 report in 2005. Finished the second version, which is in  
21 evidence in the court.

22 Q Not yet.

23 A Okay. Sorry.

24 Q Hopefully it will be soon.

25 A Okay.

26 Q Can you tell the Court, what questions were you

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 asked to study?

3 A The question was: Do 60/40 clubs have an adverse  
4 secondary impact on surrounding residential property  
5 values.

6 Q Now, I want to show you what has been marked for  
7 identification as Plaintiffs' Exhibit 8.

8 (Handed.)

9 (Plaintiffs' Exhibit 8 for identification,  
10 so marked.)

11 (Handed.)

12 Q Now, Doctor, in front of you is what has been  
13 marked for identification as Plaintiffs' Exhibit 8.

14 Is that correct?

15 A Yes.

16 Q Can you identify -- I should tell, your Honor,  
17 again, we have redacted pages from this study after  
18 consultation with the City, in which they were going to  
19 register some objections. We had no problem honoring  
20 those objections.

21 You will see some pages missing from the  
22 exhibits.

23 With that qualification in mind, Doctor, can  
24 you identify what Plaintiffs' Exhibit 8 is?

25 A Yes. It's the report that I revised in 2005.

26 Q What is the title of the report?

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 A Examining The Relationship Between Businesses  
3 That Comply With The 60/40 Zoning Regulations And  
4 Surrounding Property Values In New York City.

5 Q We will talk a bit in a minute about the actual  
6 method you used.

7 Did you use an accepted scientific method in  
8 your field for answering that question?

9 A Yes, I did.

10 Q Can you explain that method and report your  
11 result in this study that's marked Plaintiffs' Exhibit 8?

12 A Yes, I did.

13 MR. MURRAY: At this time, I move into  
14 evidence Plaintiffs' Exhibit 8.

15 MS. BINDER: Your Honor, note our continuing  
16 objection to the admission of this report.

17 THE COURT: You're not objecting that there  
18 is a missing element?

19 MS. BINDER: No.

20 As we indicated in the prior two reports, I  
21 did not think I needed to go into it again.

22 THE COURT: I want the record clear.

23 MS. BINDER: We believe the report is  
24 hearsay, they're out-of-Court statements offered for  
25 the truth.

26 THE COURT: Okay.

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 Mark it in evidence.

3 (Plaintiffs' Exhibit 8, in evidence, so  
4 marked.)

5 Q Doctor, will you please explain to the Court what  
6 hypothesis you were testing?

7 A The hypothesis I was testing was that 60/40 clubs  
8 have adverse impact on surrounding residential property  
9 values.

10 The theory being these clubs are viewed as a  
11 nuisance or undesirable.

12 Properties that are close to them would sell  
13 for lower value to reflect that undesirability.

14 Q How did you go about studying that question?

15 A This is a question -- causal question, the  
16 question being:

17 If you look at properties that are  
18 approximate to these clubs, 60/40 clubs, you will observe  
19 them having a lower property value.

20 In social science, the conventional way we  
21 go about that, or the ideal way to go about that would be  
22 to do an experiment where you would randomly build some  
23 60/40 clubs in some neighborhoods and not in others and  
24 observe the property values. Clearly it will be  
25 impractical to do an experiment. We do what is called  
26 quasi-experimental design.

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 We look at values that are close to 60/40  
3 nightclubs and compare them to property values further  
4 away. And we want to try to conform any differences that  
5 might exist between the property values that are close to  
6 60/40 nightclubs and property values that are further  
7 away.

8 For example, it's possible the properties  
9 closer to 60/40 clubs happen to be older. So, if we made  
10 a straight comparison between property closer to 60/40  
11 clubs and those further away, we might reach a conclusion  
12 that property close to 60/40 clubs have a lower value  
13 because they're closer to the 60/40 clubs and not because  
14 they're older or dilapidated.

15 So, in this exercise I attempted to control  
16 for other factors that might affect property values, to  
17 try to hold the constant while I compare the property  
18 values that are close to the 60/40 clubs and those that  
19 are further away. And --

20 Q How do you do that?

21 A The way I do that, using what is called hedonic  
22 regression, which is a regression model.

23 In this approach, what we do is look at  
24 property value as a variable, and we use the distance from  
25 the 60/40 clubs as our independent variable.

26 According to the theory, these clubs have

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 adverse impact on property values.

3 We should find that the closer you are or  
4 closer the property is to a 60/40 club, the lower the  
5 property value. So statistically we can correlate the  
6 relationship between distance and the property value.

7 Because we use multi-regression, we have  
8 more than one variable. We can statistically control for  
9 other factors that might affect the property value.

10 Those would include the size of the  
11 property, for example, the age of the property, the zoning  
12 of that neighborhood. And we attempt to conform for the  
13 neighborhood characteristics in general by limiting our  
14 comparison of the properties that are within the same  
15 neighborhood.

16 Q Now, would you explain, you mentioned the hedonic  
17 method.

18 What is that exactly?

19 A So, in real estate economics, social scientists  
20 believe the thinking is, if you look at any given  
21 property, you can decompose its value into its various  
22 attributes.

23 So, for example, as I mentioned, the size of  
24 the property would affect its property value.

25 The age, when it was built, newer property  
26 might be expected to be valued more highly. Also, the



1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 surrounding condition.

3 There's a saying in real estate: Location,  
4 location, location, a very important determinant of  
5 property value.

6 We control for physical attributes of the  
7 structure as well as location. In this case one of the  
8 things we want to test is, is it in a neighborhood where  
9 there is a 60/40 club.

10 We can isolate how each of these different  
11 attributes affect the property value.

12 We focus in particular proximity to the  
13 60/40 business. That will tell us what role does that  
14 play. How does that affect a residential property value,  
15 how close, or whether or not it's close to a 60/40 club.

16 Q So then how did you proceed from that point  
17 forward?

18 A Okay.

19 Well, I obtained data from the City  
20 Department of Finance, which assesses property values. I  
21 obtained data for 1998, that was -- at the time I was  
22 commencing the study in 2000, that was the latest data  
23 available.

24 I obtained the addresses from the counsel  
25 that I was working with, and I had those addresses. Using  
26 a geographic system, I had those addresses plotted. So I

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 was able to calculate the distance between each  
3 residential property and each of the 60/40 clubs that were  
4 in existence in 1998.

5 I limited the analysis only to those  
6 properties that were in zip codes that had 60/40 clubs.  
7 So, what I had is a data set that has all of the  
8 properties that are in a zip code in New York City that  
9 have a 60/40 club.

10 I have all of the addresses of the 60/40  
11 clubs.

12 I have the distance between each property  
13 and the nearest 60/40 club.

14 So, then, I performed a statistical analysis  
15 which attempted to correlate the distance between the  
16 60/40 club and the residential property value based on  
17 assessed values in 1998.

18 Q How many -- did you use a single model or several  
19 models?

20 A I used eight different models.

21 The first model I did was simply to look at  
22 what is the distance between the residential property in  
23 question and the 60/40 club. That is probably the most  
24 straightforward approach. But, you know, it's possible  
25 that that model specification may not accurately capture  
26 the true relationship.

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 So, if we look at the distance between 60/40  
3 businesses and a property that may ignore the fact the  
4 relationship is not strictly linear. You could find, as  
5 you get closer to a 60/40 club, property values decrease  
6 or increase at an increased or decreased rate. I  
7 attempted to capture that using a quadratic  
8 specification.

9 I used another specification.

10 I looked at properties that were within 500  
11 feet of a 60/40 club, those that were further away.

12 Here, I am comparing property values that  
13 are within 500 feet of a 60/40 club and those further  
14 away, but within the same zip code.

15 I also made similar comparison using 1,000  
16 feet as a demarcation line, comparing property values  
17 that were within 1,000 feet of a 60/40 club and those  
18 further away, but within the same zip code.

19 Then I did another comparison using 2,000  
20 feet as a demarcation line looking at properties within  
21 2,000 feet and those further away.

22 The reason why I chose those distances is  
23 that there was a study done by New York City Department of  
24 Planning where they asked realtors what were the distances  
25 at which they felt that the establishment might have a  
26 negative effect. And it was cited at 500 or 1,000 feet.

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 I included 2,000 feet as an additional  
3 check.

4 Finally, I looked at whether or not being  
5 approximate to more than one 60/40 club would have a  
6 negative effect. It's possible it's not simply being  
7 close to a 60/40 club has a negative effect on property  
8 value, but it's when a property is close to a  
9 concentration of 60/40 clubs, that is when you see a  
10 negative impact.

11 So, I did that analysis repeating the  
12 distinction between properties that are approximate to  
13 more than one 60/40 club or within 500 feet or greater,  
14 within 1,000 feet or greater, or within 2,000 feet or  
15 greater, all to gather those eight different  
16 specifications to test this being approximate to a 60/40  
17 club has a negative impact on property value.

18 Q Overall, what were the results of your eight  
19 models?

20 A Overall, I found no consistent evidence that  
21 supports the hypothesis that being a property close to a  
22 60/40 club have lower values. If anything, there is more  
23 evidence to support there was a positive relationship  
24 between property to 60/40 clubs and residential property  
25 values.

26 Q Now, then, let's talk about the specific result

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 of eight models.

3 I think the first one you said had to do  
4 with just looking at the raw numbers without controlling  
5 for any variables?

6 A That is correct.

7 So that is on table 4. So I just wanted to  
8 make a comparison between property values that were close  
9 to 60/40 club and those further away.

10 The first thing I did was look at average  
11 assessed value of property within 500 feet of a 60/40 club  
12 and those that were beyond 500 feet.

13 I also did that for 1,000 feet and for 2,000  
14 feet, comparing properties that were within 500 feet of a  
15 60/40 club to those further away. There's a difference.  
16 The difference is not significant statistically.

17 What that means that difference might be due  
18 to chance. We do not have much confidence.

19 Q What is statistical significance?

20 A That simply means if you calculate a statistic,  
21 there is a sampling distribution associated with that  
22 statistic.

23 If we are to repeat this exercise a number  
24 of times, say a hundred or thousand times, what is the  
25 chance we would observe a given result simply due to  
26 chance.

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 In social science, it is to use 95 percent  
3 level of confidence, meaning there is only five percent  
4 probability that this result is due to chance. So, if  
5 something is not significant, it means it is greater than  
6 five percent.

7 We do not have a lot of confidence in the  
8 result.

9 Q Is there a mathematical formula by which you can  
10 calculate that?

11 A Yes, there is.

12 Do you want me to write it?

13 Q If you can in a way we might understand it.

14 A Okay.

15 So, in this case, in table 4, the test, I am  
16 comparing mean, the statistic here is calculated by taking  
17 the difference of the means of property within 500 feet,  
18 compared to properties that are beyond 500 feet, dividing  
19 that by the overall standard error, we calculate a  
20 standard error for property within 500 feet. We calculate  
21 a standard error for property within -- beyond 500 feet.  
22 We take over all error and that's our denominator; that  
23 yields a statistic that has a known sampling distribution  
24 similar to normal distributions.

25 We can -- based on that statistic, we can  
26 know with precision what is the likelihood of observing

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 this solely due to chance.

3 Q If you look at table 4, do you see another 500  
4 feet, the average assessed value within the 500-foot ring  
5 is lower if you are-- it is for outside the ring, correct?

6 A That is correct.

7 Q You say not statistically significant that is  
8 what you mean?

9 A Yes.

10 Q This is the absolute raw numbers?

11 A Yes.

12 It could be the properties that are within  
13 500 feet could be much smaller, for example. So that  
14 could explain why you see the lower difference. But, more  
15 importantly, it's not statistically significant. We do  
16 not have a lot of confidence in the difference  
17 irregardless.

18 Q At the thousand foot level, the raw numbers shows  
19 that if you are within a thousand feet of 60/40  
20 businesses, your property values will be higher than if  
21 you are more than a thousand foot?

22 A That's correct.

23 Q Again, is that of any statistical significance?

24 A No.

25 We do not have much confidence in the  
26 result. It's a good deal of probability that is due to

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1 Dr. Freeman - by Plaintiff - Direct/Murray

2 chance.

3 Q You examined the raw numbers for 2,000 feet.

4 If I read this correctly, you discovered if  
5 you are within 2,000 feet of 60/40 businesses, your  
6 property value is going to be higher than if you are more  
7 than 2,000 feet away from such businesses?

8 A That is correct.

9 This result is statistically significant at  
10 a 95 percent level of confidence.

11 Q That was just the raw numbers.

12 Does the next table show what happens when  
13 you control for variable?

14 A It does.

15 Table 5 includes the control variable which  
16 I listed in table 3. So I only present the main  
17 independent variable of interest in table 5.

18 Would you like me to go through the table?

19 Q Yes, tell us the result of -- this is now the  
20 second model or the second and third model?

21 A Second and third model.

22 Q Take us through the second and third model and  
23 what the results were of those?

24 A Okay.

25 So, the second and third column of table 5  
26 simply compares the linear distance, in other words, the



1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 number of feet away from a 60/40 club and assessed  
3 property value.

4 What this result shows, the distance row,  
5 the row labeled distance is the further away you move from  
6 a 60/40 club, property values decline by .00283 of a  
7 percent. That result is statistically significant. It is  
8 perhaps not that meaningful. It is a small number  
9 relationship, the opposite is what the secondary effect  
10 sustained, which would, where you would expect property  
11 values to increase and not decreasing even if it's a  
12 slight decrease.

13 Q If I read this number correctly, it means the  
14 closer you are to 60/40 businesses, your property value is  
15 going to be very slightly higher?

16 A Correct.

17 Q Go ahead.

18 A So that is the second and third column of table  
19 5.

20 The fourth and fifth column here, I am  
21 measuring, I am relaxing the assumption, the relationship  
22 is linear. As I mentioned earlier, if -- for example, if  
23 you move away from a 60/40 club, property values increase  
24 at an increased rate or decreases at a decreased rate,  
25 this specification attempts to capture that.

26 Here, if you look at P- values, P- value

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 tells you probability of observing this result simply due  
3 to chance.

4 So, using 95 percent level of confidence, we  
5 are looking for P- value less than .05.

6 Here, the P- value for distance variable and  
7 distance variables are above .05. We do not have much  
8 confidence in these relationships. You know, there is a  
9 20 percent chance for distance variable and 50 percent  
10 chance for the distance variables that these observed  
11 values are totally due to chance.

12 Q What are the observed values?

13 A They're negative .0000157.

14 This other is too small. It is one to the  
15 weight of power of--

16 Q What does it mean, negative.

17 Can you translate that?

18 Are the property values getting lower as you  
19 go farther away, or getting higher?

20 A They're getting higher. They're getting higher.

21 THE COURT: My question: Are you talking  
22 about property values?

23 Wouldn't a more accurate property value be  
24 the market value rather than somebody assessed the  
25 value, which is somebody's opinion about what this  
26 property is worth? What it would sell for in the open

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 market more accurate a determination of property  
3 value?

4 THE WITNESS: Market value, it is an actual  
5 sale. One disadvantage, though, is that not all  
6 property sells, you know, every year in a timely  
7 fashion. There could be some bias in terms of what  
8 properties are selling.

9 It may also be the case that only certain  
10 types of properties are selling. So, while it's true  
11 there may be less measurement error with the sale  
12 values, the assessed value covers the entire universe,  
13 it is a more complete sampling.

14 Q What are the assessed values as opposed to  
15 mirror?

16 A Mirror are to be reflective.

17 The City has three ways to assess property.  
18 Mostly, I believe, reflect sale value for some property  
19 income producing. They are based on that.

20 And for newer properties just constructed,  
21 there might not be any comparable or comparable units.  
22 They use estimate based on construction cost.

23 So, assessed value in some way is more  
24 complete. It takes into account the differences in  
25 properties which you would not find if you only had sales  
26 of older buildings, residential, you know, residential

1 Dr. Freeman - by Plaintiff - Direct/Murray

2 occupied buildings.

3 Q Are assessed values supposed to represent market  
4 value as best as the City can do that, taking into account  
5 all the factors that it has at its disposal?

6 A Yes.

7 Q With respect to table 5, depicting the second and  
8 third models, do either of those models support the  
9 proposition that 60/40 businesses cause adverse secondary  
10 effects of lower property value?

11 A No.

12 Q Is one of the models statistically significant on  
13 that table?

14 A You said one of the models.

15 Q One of the results of the two models  
16 statistically significant on table 5?

17 A Yes.

18 Linear distance model, which is presented in  
19 column two and three, there the variable is statistically  
20 significant.

21 I would note, the model as a whole, both of  
22 the models as a whole, are statistically significant and  
23 that is indicated by the statistics when we look at all  
24 independent variables, which I did not include in all the  
25 tables, but are in table 3.

26 If you look at the entire regression model,

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 it is statistically significant.

3 So, approximately 71 percent of assessed  
4 value is explained by all variables listed in table 3, or  
5 all variables I include.

6 In social science, 70 percent is a fairly  
7 high statistic.

8 You may find, 10, 15, 20 percent of any  
9 phenomena that a social scientist is trying to explain.  
10 Here, we're doing a fairly good job in modelling the value  
11 of assessed property value.

12 Q What is the next table to demonstrate to us,  
13 which models were they?

14 A Okay.

15 Table 6. Here, again, we are relaxing the  
16 assumption that the relationship between proximity to a  
17 60/40 club and assessed value is linear, and so we simply  
18 use different ring metrics.

19 The first metric is using a 500-foot ring.  
20 That is in column two and three.

21 Here, what we're doing is comparing assessed  
22 property value within 500 feet of a 60/40 club and  
23 assessed property value beyond 500 feet. Holding constant  
24 all the differences in the property values I mentioned.  
25 These are properties within the same zip code.

26 The coefficient here tells us .109 or there

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 is approximately, 11 percent premium associated with  
3 assessed value within 500 feet of 60/40 club.

4 The P- value again tells us what the  
5 probability of observing this results solely due to chance  
6 using 95 percent level of confidence, we are looking for  
7 p- value less than .05. Higher P- value is less than  
8 .01.

9 The probability of observing this  
10 relationship solely due to chance is fairly low, less than  
11 one percent. We're pretty confident in this result.

12 Q Does using this result support the proposition  
13 that 60/40 businesses cause adverse secondary effect of  
14 lower property value?

15 A No.

16 Because the value is higher if you are  
17 within 500 feet of a 60/40 club as opposed to being beyond  
18 500 feet.

19 Q Go ahead with the thousand foot and 2,000 foot  
20 rings.

21 What does it show?

22 A The fourth and fifth column under the heading  
23 1,000 feet ring, here we are comparing property within  
24 1,000 feet of a 60/40 club and property beyond 1,000 feet  
25 within the same zip code.

26 Here, it shows that this property

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 characteristic, and here we see the property within 1,000  
3 feet of 60/40 clubs are assessed at approximately, three  
4 percent higher value than the property that is beyond a  
5 thousand feet, but within the same zip code.

6 If we look at the P- value, that tells us  
7 the probability is due to chance. Again, it is low,  
8 .002. We're looking for value less than .05.

9 Here we are using 95 percent level of  
10 confidence. We are confident this result is not due to  
11 chance. The probability is very low it is due to chance.

12 This, again, is not consistent with the  
13 secondary effect which suggests coefficient should be  
14 negative five and not positive.

15 Finally, in the last two columns of table 6,  
16 we compare property that is within 2,000 feet of a 60/40  
17 club and property that is beyond 2,000 feet within the  
18 same zip code.

19 Here, we have very small coefficient. It's  
20 not statistically significant. The probability of  
21 observing this solely due to chance is .799,  
22 approximately, 80 percent.

23 We do not have a lot of confidence in this  
24 result. It's fairly small, in any event.

25 Taken together, the evidence presented in  
26 table 6 would seem to run counter to the secondary effect

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 hypothesis.

3 In two of the three comparisons, the  
4 property values were higher when they're closer to 60/40  
5 clubs as opposed to being further away.

6 Q Finally, tell us what the last table shows?

7 A Table 7, we attempt to try to see whether being  
8 close to a concentration of 60/40 clubs has a negative  
9 impact on assessed property value.

10 So, here, we examine it more than one club  
11 within 500 feet or more than one club within 1,000 feet  
12 and so on.

13 The second and third column at table 7 shows  
14 that property that are within more than 500 feet, of, are  
15 assessed at 12 percent value higher than property beyond  
16 500 feet of a 60/40 club.

17 If we look at the P- value, the probability  
18 of observing this relationship solely due to chance is  
19 less than one percent, as indicated by the less than .01.

20 So, we are fairly confident this result is  
21 not solely due to chance. That result is consistent with  
22 the secondary effect. We would expect property that are  
23 within 500 feet or more would have lower assessed value.

24 Moving onto the fourth and fifth column of  
25 table 7, here, we compare assessed property value for  
26 property that are within 1,000 feet or to those beyond



1 Dr. Freeman - by Plaintiff - Direct/Murray

2 1,000 feet.

3 Here, the relationship is negative.

4 However, if you look at P- value, this probability of  
5 observing this solely due to chance is only -- is about 65  
6 percent, .648.

7 So, the coefficient is very small.

8 Probability of observing this due to chance is very high.  
9 We do not have a lot of confidence. It does not really  
10 tell us reliably what the relationship is.

11 The last two columns compare properties that  
12 are within 2,000 feet of more than one-story property that  
13 are within 2,000 feet of more than one 60/40 club to  
14 property that are beyond 2,000 feet.

15 Here you see the coefficient is negative.  
16 So properties that were within 2,000 feet, if more than  
17 one 60/40 club are assessed about nine percent lower value  
18 than properties that are beyond 2,000 feet of more than  
19 one 60/40 club.

20 Here, the property value, here, the P- value  
21 probability of observing this due to chance is less than  
22 .01.

23 So this is a statistically significant  
24 result.

25 Q Having taken into account all eight models,  
26 Doctor, can you summarize what conclusion you can draw to

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 a reasonable degree of scientific certainty by taking all  
3 the eight models as a whole?

4 A Sure.

5 In social science we are looking for  
6 consistent pattern that supports this hypothesis.

7 In this case the analyses do not support the  
8 concept that proximity to 60/40 clubs has a negative  
9 impact on property values.

10 Mostly the analyses were statistically  
11 insignificant or, in fact, found properties closer to  
12 60/40 clubs to have higher assessed values that contradict  
13 the secondary effect thesis.

14 In this report we find no consistent  
15 evidence that supports the argument that proximity to  
16 60/40 club does have a negative impact on property values.

17 Q Now, you have indicated that you used 1998  
18 assessed property values.

19 Correct?

20 A That is correct.

21 Q Now, if you were to assume that in 1998, not all  
22 of the clubs that you studied had all converted from 100  
23 percent to 60/40, some had, some perhaps did not, by the  
24 time of those property assessments, how would that affect  
25 the analysis?

26 A Well, that would -- if that were true and

1 Dr. Freeman - by Plaintiff - Direct/Murray  
2 assuming they were operating at hundred percent adult  
3 establishment, that would be more consistent with the  
4 notion that would provide even stronger evidence there is  
5 no adverse impact.

6 Because you would expect on a hundred  
7 percent club, it would have a stronger impact on a 60/40  
8 club, this, if anything, we may be making too weak a case  
9 or too weak an argument that adult establishments do not  
10 have negative impact on property.

11 MR. MURRAY: Thank you.

12 That is all I have.

13 THE COURT: Cross examination.

14 MS. BINDER: Thank you, your Honor.

15 CROSS EXAMINATION

16 BY MS. BINDER.

17 Q Good morning, Dr. Freeman.

18 A Good morning.

19 Q Nice to see you again.

20 A Nice to see you.

21 Q You're familiar with the term 60/40 club as used  
22 in New York.

23 Correct?

24 A Yes.

25 Q So, what does it mean?

26 A It means that a club is attempting to comply with

1 Dr. Freeman - by Plaintiff - Cross/Binder  
2 zoning regulation would configure their establishment so  
3 that no more than 40 percent of the establishment is  
4 devoted to adult uses.

5 Q It's your understanding the 60/40 club in New  
6 York adopted their 60/40 configuration to comply with  
7 zoning requirements to regulate that?

8 A Yes.

9 Q It's true, isn't it, you were retained to give  
10 expert testimony on the issue of whether 60/40 clubs in  
11 New York City are associated with decreased property  
12 value?

13 A Correct.

14 Q Now, you, yourself, you do not believe there is  
15 any scientific proof that the presence of 100 percent  
16 sexually oriented business on a particular block is  
17 associated with a decrease in property value?

18 A Correct.

19 Q You do not believe that.

20 You believe, don't you, many of the  
21 secondary effect studies regarding crime and property  
22 values utilized by different governmental entities are  
23 flawed because they do not adhere to certain professional  
24 and scientific standards?

25 A Yes.

26 Q Do you agree it's important to adhere to

1 Dr. Freeman - by Plaintiff - Cross/Binder  
2 professional scientific standards when undertaking a  
3 secondary effect?

4 A Yes.

5 Q Now, you testified, I believe, you first looked  
6 at the issue of 60/40 clubs and property values and then  
7 you prepared a report in 2002.

8 Correct?

9 A Correct.

10 Q That report was used in a Federal case that was  
11 filed on behalf of a club called LACE and some other club;  
12 isn't that correct?

13 A Yes.

14 Q That was shortly after the City of New York  
15 amended its zoning to change the definition of adult  
16 eating or drinking establishments to cover 60/40 clubs,  
17 correct?

18 A I am less aware of that.

19 Q You're aware that zoning regulations were changed  
20 in New York so 60/40 clubs would also be considered adult  
21 establishments.

22 Correct?

23 A Yes.

24 Q That litigation was in Federal Court.

25 This Court is about the constitutionality of  
26 that change.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 Correct?

3 A Yes.

4 Q Now, in 2002, you prepared a statistical analysis  
5 of property values for certain 60/40 clubs.

6 Correct?

7 A Correct.

8 Q One like this, anyway.

9 In your 2002 analysis you examined the  
10 effect of only one 60/40 club on assessed property value?

11 A Yes.

12 Q You updated your analysis in 2005.

13 Correct?

14 A Correct.

15 Q 2005, you examined the effect of 36 different  
16 60/40 clubs on assessed property value?

17 A Yes.

18 Q You updated your report because subsequent to  
19 preparation of the 2002 report, you learned that the City  
20 of New York had reported the existence of 36 60/40 clubs  
21 in connection with the 2001 rezoning.

22 Correct?

23 A Correct.

24 Q Now, prior to updating your study in 2005, did  
25 you review a report prepared by Dr. Daniel Linz, L-I-N-Z  
26 discussing his analysis of whether 60/40 clubs in New York

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 City caused crime?

3 A This is prior to 2005, you're asking me?

4 Q Prior to updating your study in 2005, did you see  
5 his study?

6 A I don't recall seeing it.

7 Q Have you ever seen it, his study?

8 A I don't believe so. I don't believe so.

9 Q Okay.

10 But at some point you become aware there  
11 were more than one 60/40 club?

12 A Right.

13 Q So, you updated your report and you included a  
14 list of the 36 60/40 clubs in table 1 to your 1995 report  
15 that is in evidence as Plaintiffs' Exhibit 8?

16 A Right.

17 Q You did an analysis for all six of those clubs on  
18 your table 1?

19 A Yes.

20 Q I think something is there twice, but, it is 36  
21 without counting the one that is there twice?

22 A Okay.

23 Q Now, it's true, isn't it, that for both your 2002  
24 and 2005 analysis you used assessment data?

25 A Yes.

26 Q As assessment data you used was the record of

1 Dr. Freeman - by Plaintiff - Cross/Binder  
2 assessed value for property in 1998, that New York City  
3 uses for tax purposes.

4 I am quoting that language from page 20 of  
5 the report in front of you.

6 Correct?

7 A Yes.

8 Q Now, assessed values are estimates of property  
9 values used for purposes of determining how much real  
10 estate tax the City gets to charge for the property.

11 Correct?

12 A Correct.

13 Q And so, assessed values do not necessarily  
14 reflect the market value of the property at a given  
15 minute.

16 Do they?

17 A Not necessarily.

18 Q In fact, you recognize on page 20 of your report  
19 that assessed value is not an ideal measure of actual  
20 market value of a property.

21 Correct?

22 A It's not perfect.

23 Q Okay.

24 It's fair to say a better measure of market  
25 value of property would be the actual sale price when it  
26 exchanges hands.



1 Dr. Freeman - by Plaintiff - Cross/Binder

2 Correct?

3 A Yes.

4 Q Another way to measure market value, aside from  
5 looking at the sale price, you can look at the appraised  
6 value of a property.

7 Correct?

8 A You could.

9 Q Appraisal is where an appraiser looks at actual  
10 sales prices of comparable property in order to determine  
11 the market value of a property that is going to be sold.  
12 Correct?

13 A Yes.

14 Q In fact, when you did a study in Ohio, of effect  
15 of sexually oriented business on property value, you used  
16 sale data in that study, didn't you, Dr. Freeman?

17 A Yes.

18 Q The reason you used assessment data in this case,  
19 rather than actual sale data or appraised value is, it was  
20 the only way you could get value for all the property in  
21 the study area.

22 Correct?

23 A Yes.

24 Q But, as you testified in response to Justice  
25 Yorks' question on direct, you recognized there is some  
26 measurement error in the assessed value of a property?

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 A Yes.

3 Q Now, you're a professor right here at Columbia  
4 University.

5 Correct?

6 A Yes.

7 Q You have expertise in urban affairs with a  
8 particular focus on urban housing.

9 Correct?

10 A Yes.

11 MS. BINDER: Excuse me, your Honor.

12 (Pause.)

13 Q I believe you testified you lectured and written  
14 on the topic of urban gentrification?

15 A Yes.

16 Q You have examined property values in New York  
17 City and other urban neighborhoods.

18 Correct?

19 A Yes.

20 Q Now, assessment for property in New York City,  
21 they're prepared by the New York City Department of  
22 Finance.

23 Correct?

24 A Yes.

25 Q I believe you testified to that.

26 A Yes. Correct.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 Q They're prepared so that, as I think you  
3 testified before, so that amount of real estate tax can be  
4 determined.

5 Correct?

6 A Yes.

7 Q And, you're aware the tax year for real estate  
8 tax in New York City runs from July 1 to June 30 of any  
9 given year.

10 Correct?

11 A Yes.

12 Q And assessment for each particular property has  
13 to be finalized before the tax bill goes out.

14 Yes?

15 A Yes.

16 Q So, now you're aware, Dr. Freeman, that the  
17 Department of Finance releases its final assessment for  
18 property in the City in May of that year before the tax  
19 bill goes out.

20 Correct?

21 A Yes.

22 Q It's also true, isn't it, a few months before the  
23 release, the final assessment, in May, they release a  
24 tentative amount in January of that year?

25 A I don't know for sure the exact sequence of, you  
26 know, what the exact month it is released.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 Q You do know before the final assessment is  
3 released, they release a computation of a tentative  
4 assessment a few months before the final assessment is  
5 released?

6 A Yes.

7 Q So, if a property owner has a problem, they can  
8 go to the Department of Finance and say there's a problem,  
9 I want you to fix it.

10 And so there is some time in there for the  
11 property owner to be heard.

12 Correct?

13 A Correct.

14 Q Now, I believe you testified in your analysis in  
15 this case for Plaintiffs' Exhibit 8 in evidence, you used  
16 1998 assessment data?

17 A Correct.

18 Q So, that would be assessment data that was  
19 released by the Department of Finance in May of 1998.

20 Correct?

21 A Correct.

22 Q Now, weren't you told by the lawyers who retained  
23 you in this case that the zoning regulation that  
24 establishes the 60/40 requirement did not go into effect  
25 until July of 1998.

26 Right?

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 A Well, 1998.

3 Yes.

4 Q Did you know they did not go into effect until  
5 July of 1998?

6 A At the time I was doing my analysis, I don't  
7 recall if I knew the exact month.

8 Q In fact, when you did your analysis, you believed  
9 that the 60/40 clubs you used were all open in 1998, and  
10 they were, all adopted 60/40 configurations prior to  
11 1998.

12 Isn't that true?

13 A I know they were operating as adult  
14 establishments prior to 1998.

15 That was something I ascertained to make  
16 sure there was a sequence that the club was operating as  
17 an adult establishment prior to the assessed values that I  
18 was certain of.

19 The data, when they reconfigured, I don't  
20 believe I knew when that happened.

21 Q Isn't that true you assumed they reconfigured to  
22 60/40 when you used this prior to the time the data was  
23 selected by the City Finance Department?

24 Isn't that true?

25 A I am not sure I had any way of knowing that for  
26 certain.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 I guess they were in the process of planning  
3 to reconfigure without knowing the date when they were to  
4 be reconfigured. I think the key was they were operating  
5 as adult establishments prior to 2008.

6 Q You were retained to study impact of 60/40  
7 establishments on property values, weren't you, Dr.  
8 Freeman?

9 A I was.

10 Q Let me ask you this, Dr. Freeman:

11 You remember coming to my office, I think it  
12 was last year, summer of 2008, for a deposition.

13 Correct?

14 A Yes.

15 Q You were asked questions by me and you gave  
16 answers under oath.

17 Correct?

18 A Correct.

19 MS. BINDER: We have a copy of the  
20 deposition transcript of Dr. Freeman.,

21 We want it marked for identification. It  
22 was premarked as Defendants' Exhibit TT.

23 (Defendants' Exhibit TT for identification,  
24 so marked.)

25 Page 38, line 25, do you remember being  
26 asked these questions and giving these answers?

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 "QUESTION: So, were all 36 clubs in your  
3 study, were they all open in 1998?

4 "ANSWER: To my knowledge, they were.

5 "QUESTION: And do you know when they  
6 adopted a 60/40 configuration?

7 "ANSWER: To my knowledge, it was before  
8 1998."

9 Do you remember giving that answer?

10 A I don't remember.

11 Q Isn't it true you would not have used assessment  
12 data from 1998 if you thought the assessment data predated  
13 the establishment of the 60/40 club?

14 Isn't that true?

15 A You mean configuration.

16 Q The configuration of the 60/40 club?

17 A I mean, I think if any club is operating as an  
18 adult establishment, that, that would tend to amplify to  
19 the extent that thesis is true, would amplify that effect,  
20 if anything, doing an analysis, as I did, would tend to --  
21 we expect to see a bigger, bigger impact if they were  
22 operating as a 100 percent club as opposed to a 60/40  
23 club.

24 So, in other words, that would work in my  
25 favor.

26 So, you know, ideally you would have them

1 Dr. Freeman - by Plaintiff - Cross/Binder  
2 set up a 60/40 club before you do an analysis to the  
3 extent they were already opened and operating as 100  
4 percent established.

5 The results that were reported later on  
6 would tend to work less in my favor, so--

7 Q You were not asked to analyze the impact of 100  
8 percent establishments, were you, Dr. Freeman?

9 A No.

10 I was asked to look at these clubs.

11 Q You were asked to look at the impact of 60/40  
12 clubs?

13 A Yes.

14 Q You used assessment data that predated the  
15 establishment of any 60/40 club.

16 Correct?

17 MR. MURRAY: Objection.

18 THE COURT: I'll allow it.

19 A Say that again.

20 Q You, in fact, used assessment data that predated  
21 the establishment of any 60/40 club.

22 Correct?

23 A I don't know that is true.

24 Some of the clubs, the announcement was, I  
25 believe, 1995.

26 I am assuming in between that time the club



1 Dr. Freeman - by Plaintiff - Cross/Binder  
2 started reconfiguring. So by 1998, I would imagine they  
3 would not wait until three days before.

4 Q Let me ask you this:

5 If it turns out no club reconfigured before  
6 July of 1998, then it would be true that you used  
7 assessment data that predated the configuration of any  
8 club to 60/40.

9 Correct?

10 A If that were true, yes.

11 Q If that were true. Okay.

12 Now, you told us that you used 1998 data  
13 because at the time you did your study that was the latest  
14 data available.

15 Correct?

16 A Correct.

17 Q It's fair to say that had you had information  
18 that clubs did not start to reconfigure until the latter  
19 part of 1998 and '99 or 2000 data was available to you,  
20 you would have used the '99 or 2000 data.

21 Correct?

22 A Right.

23 Because, you know, that would work against  
24 the counsel I am working with.

25 I would say, it would be better to wait  
26 until they reconfigure to look at it.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 Q If you had information that the reconfiguring was  
3 done at the end of 1998, and you had the 1999 or 2000  
4 data, you would have used the '99 or 2000 data.

5 Correct?

6 A Yes.

7 Q Now, when you updated your study in 2005, later  
8 assessment data would be available to you.

9 Correct?

10 A Yes.

11 I would be able to obtain it, yes.

12 Q In fact, when you updated your study in 2005, you  
13 added 20 other clubs to your analysis, you still used 1998  
14 data.

15 Correct?

16 A Correct.

17 Q Okay.

18 Now, I believe you testified earlier that  
19 you studied the 36 -- each of the 36 clubs listed in the  
20 table.

21 Correct?

22 A Yes.

23 Q Would you agree that if one or more of the 36  
24 clubs had not even opened in 1998, it should not have been  
25 included in your analysis of the 1998 assessment.

26 Correct?

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 A Right.

3 Q Now, you testified that you do not recall having  
4 seen Dr. Linz' report.

5 Were you aware of the nature of the analysis  
6 that he did when you did your analysis in '95?

7 A I have an idea of what he was doing.

8 Q Okay.

9 A I am saying I cannot recall specifically. I may  
10 have looked at it. It has been several years.

11 Q Why don't we get a copy of Dr. Linz' report and  
12 show it to you. It's in evidence as Exhibit 6. The table  
13 part is Exhibit 6A.

14 (Handed.)

15 Q Now, I would like to direct your attention,  
16 Dr. Freeman, to page 19 of Dr. Linz' report.

17 There is the end of one table and then there  
18 are two other tables.

19 Now, if you look at the middle box of  
20 Dr. Linz' report, it's true that report indicates that six  
21 of the clubs either had not opened before, six clubs had  
22 subsequently closed or had not been opened as of 1998.

23 Do you see where it says that?

24 A It says "opening".

25 THE COURT: What page?

26 MS. BINDER: Sorry.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 Page 19.

3 Q There's a chart where it talks about six clubs  
4 that had not been opened yet in 1998, or closed before  
5 2000, before the year 2000.

6 In fact, if you look, Dr. Freeman, look back  
7 to the preceding page, page 18, preceding page that lists  
8 Dr. Linz' report, lists 14 clubs he confirmed had  
9 reconfigured in 1998 and were 60/40 from 1998 through  
10 2002.

11 Then the second table on page 19 indicates  
12 six clubs that were not opened during that entire 1998 to  
13 2000 period because some of them had closed. Some of them  
14 had not been opened yet.

15 Do you see where it says that?

16 A Yes.

17 I see, he says two were not opened yet.  
18 Candlewood, bottom two.

19 Q Okay.

20 And then, he has a third table where he  
21 lists fifteen clubs that he says it could be confirmed  
22 they were operating 60/40 between 1998 and 2002.

23 Right?

24 A Could not determine status.

25 Q He indicates in the second column of the study  
26 that he did not use the six clubs and fifteen clubs, he

1 Dr. Freeman - by Plaintiff - Cross/Binder  
2 could not determine, the six clubs were not opened all the  
3 way through, and the others he could not determine what  
4 their status was.

5 Correct?

6 A I don't know why they're listed in the table.

7 Q But, that is what it says, though?

8 A Where does it say he did not use them in the  
9 analysis?

10 Q I believe in the narrative, if you want to take a  
11 look?

12 A I just don't know, I did not read it.

13 Q Let's talk about what you did.

14 You did not try to ascertain whether the 36  
15 clubs on the list you got that was prepared by the City in  
16 2000 know whether they were open, whether each of them was  
17 opened even in 1998, did you, Dr. Freeman?

18 A I did.

19 They were opened prior to 1998.

20 Q You assume they were opened prior to 1998?

21 A I know tried to ascertain that.

22 Q How did you try to ascertain that?

23 A Conversation with counsel.

24 I had a student to try to find that  
25 information to the extent it was available on the  
26 internet.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 I did try to ascertain they were opened  
3 prior to 1998.

4 Q Did you actually ascertain they were opened in  
5 1998?

6 A I was pretty confident they were. That is why I  
7 included them.

8 Q Even the two on the list as not having been  
9 opened in 1998?

10 A You know, I don't know. I mean, to be honest, I  
11 don't know why he said they were not opened. I know  
12 Candlewood was opened prior to 1998. I know that for a  
13 fact. It was opened prior to 1998.

14 Q You attempted, in fact --

15 ~~Withdrawn.~~

16 You attempted to do a study to look at  
17 effect of the presence of 60/40 businesses on neighborhood  
18 property value.

19 Correct?

20 A Yes.

21 Q And, but you did not compare the value of  
22 neighborhood property in proximity to 60/40 clubs before  
23 and after the club changed its configuration from a 100  
24 percent to 60/40..

25 Did you?

26 A I did not.

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 Q You did not try to do that before and after  
3 analysis to see if a change of 60/40 caused an increase in  
4 property value?

5 A If it caused an increase?

6 Q An increase?

7 A No, I did not.

8 Q So, you have no statistical data to support the  
9 conclusion any particular club reconfiguring from 100  
10 percent adult to 60/40 caused an increase in property  
11 value.

12 Do you?

13 A No.

14 I don't have any data that supports that the  
15 change from 100 percent establishment to 60/40 caused an  
16 increase in property value.

17 Q In fact, you do not agree 100 percent clubs are  
18 even associated with a decrease in property value.

19 Do you?

20 A I have not seen any evidence to support that  
21 contention.

22 Q You have not seen any evidence there is any  
23 difference between a 60/40 club and a 100 percent club.

24 Isn't that right?

25 In terms of how they assess property value?

26 A I am not aware of any study to explore that

1 Dr. Freeman - by Plaintiff - Cross/Binder

2 question.

3 Q You are not aware of any evidence to support the  
4 contention that 60/40 clubs have a different effect on  
5 property value than 100 percent clubs.

6 Do you?

7 A Right.

8 I am not aware of any evidence to support  
9 that.

10 Q In fact, your study, if it shows anything, if we  
11 assume 60/40 clubs did not come into existence until the  
12 latter part of 1998, your study, if it shows anything, it  
13 shows 100 percent clubs do not have impact on property  
14 value.

15 Isn't that right?

16 A If it is true all of the clubs that are included  
17 in the analysis, none of them were reconfigured until  
18 after the assessment date, then that's true.

19 MS. BINDER: I have nothing further, your  
20 Honor.

21 THE COURT: Redirect?

22 MR. MURRAY: No.

23 No, thank you, your Honor.

24 THE COURT: Thank you, Doctor.

25 Witness excused.

26 THE COURT: Plaintiff?



**PGS. 674 – 828**  
**OMITTED**

N.Y. Co. Index  
Nos. 113049/96, 103568/96,  
and 103569/96

To be argued by:  
LEONARD KOERNER  
(25 minutes)

COURT OF APPEALS  
STATE OF NEW YORK

---

STRINGFELLOW'S OF NEW YORK, LTD.,  
Plaintiff-Appellant,  
- against -  
THE CITY OF NEW YORK, et al.,  
Defendants-Respondents,  
-and-  
TIMES SQUARE BUSINESS IMPROVEMENT DISTRICT,  
Intervenor-Defendant-Respondent,  
-and-  
CENTER FOR THE COMMUNITY INTEREST, et al.,  
Intervenors-Defendants-Respondents.  
-----X  
AMSTERDAM VIDEO INC., et al.,  
Plaintiffs-Respondents,  
-against-  
THE CITY OF NEW YORK, et al.,  
Defendants-Respondents,  
(and other Intervenors-Defendants-Respondents).  
-----X  
RACHEL HICKERSON, et al.,  
Plaintiffs-Respondents,  
-against-  
THE CITY OF NEW YORK, et al.,  
Defendants-Respondents,  
(and other Intervenors-Defendants-Respondents).

---

CITY RESPONDENTS' BRIEF

---

JEFFREY D. FRIEDLANDER,  
Acting Corporation Counsel of  
the City of New York,  
Attorney for the City  
Defendants-Respondents,  
100 Church Street,  
New York, New York 10007.  
(212) 788-1010 or 1033

LEONARD KOERNER,  
ALBERT G. FREDERICKS,  
ELIZABETH S. NATRELLA,  
of Counsel.  
December 11, 1997

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JNR-001310

**Pages i-xiii and 1-58 Omitted**

subdivided and are also available, nor did it account for lots that do not front a roadway. Inclusion of those lots would have been entirely appropriate. . . .

Another factor used in assessing whether an adult use ordinance provides for sufficient public access to such uses is whether the ordinance under review allows for the operation of as many adult establishments as existed in the community at the time of the law's enactment. Islip, 73 N.Y.2d at 560.

The record here shows, as the Supreme Court found, that DCP calculated that a total of approximately 500 potential adult establishments may operate under the Amendments, which is more than adequate to cover the 177 existent businesses and almost a 3-to-1 ratio (A52-53). This calculation took into account only the 4% of the City's total land area which was found by DCP not to be encumbered by certain properties that are unlikely to be developed for any commercial use, including properties occupied with public utilities or oil storage facilities, property designated as wetlands by the State Department of Environmental Conservation, and publicly-owned property of more than 10,000 square feet (ante, pp. 18-20). In making this estimate, DCP also took into account both the limitation on districts where adult uses are permitted and the requirement that an adult establishment be located a 500-foot distance from certain zoning districts, specified community facilities and other adult establishments (id.).

The Amendments thus not only permit all of the City's existing adult establishments to continue to operate in New York City, but also provide for a significant expansion of the City's adult use market. Significantly, moreover, as the Supreme Court recognized (A49), in looking at reasonable access to adult uses, the following factors must be considered: 1) very few currently operating establishments are as large as the 10,000 square foot useable floor area size permitted; and 2) the Amendments do not restrict establishments which sell or display limited amounts of adult material, often found at the numerous general purpose book and video stores and newsstands throughout the City, a significant factor cited in Islip. 73 N. Y.2d at 558. Plaintiffs fail to acknowledge these significant factors.

**Pages 60-84 Omitted**

1

1  
2 SUPREME COURT OF THE STATE OF NEW YORK  
3 COUNTY OF NEW YORK

4 -----x  
5 RACHEL HICKERSON, DEREK JONES, TY  
6 McCONNELL, and ELLIOT STAMLER,

7 Plaintiffs,

Index No.  
103569/96

8 - against -

9 THE CITY OF NEW YORK and HON.  
10 RUDOLPH W. GIULIANI, as Mayor of the  
11 City of New York, JOEL A. MIELE, SR.,  
12 as Commissioner of the Department of  
13 Buildings of the City of New York,  
14 and JOSEPH B. ROSE, as the Director  
15 of the Department of City Planning  
16 of the City of New York,

17 Defendants.

18 -----x  
19 September 3, 1996  
20 12:20 p.m.

21 Deposition of MARILYN MAMMANO, taken  
22 by the Hickerson Plaintiffs, pursuant to Order,  
23 at the offices of New York Civil Liberties  
24 Union, 132 West 43rd Street, New York, New York,  
25 before Loretta M. Bodtmann, a Shorthand Reporter  
and Notary Public within and for the State of  
New York.

GREENHOUSE REPORTING, INC.  
363 Seventh Avenue - 20th Floor  
New York, New York 10001  
(212) 279-5108

EXHIBIT C

JNR-001314

1449

A P P E A R A N C E S :

NEW YORK CIVIL LIBERTIES UNION  
Attorneys for the Hickerson Plaintiffs  
132 West 43rd Street  
New York, New York 10036  
BY: BETH HAROULES, ESQ.

LIPSITZ, GREEN, FAHRINGER, ROLL,  
SALISBURY & CAMBRIA  
Attorneys for Amsterdam Video  
110 East 59th Street  
New York, New York 10022-1304  
BY: HERALD PRICE FAHRINGER, ESQ.

LAW OFFICES OF MARK J. ALONSO, P.C.  
Attorneys for Stringfellow's  
275 Madison Avenue  
New York, New York 10016  
BY: MARK J. ALONSO, ESQ.

DEWEY BALLANTINE  
Attorneys for American Alliance  
for Rights & Responsibilities, et al.  
1301 Avenue of the Americas  
New York, New York 10019-6092  
BY: HEATHER K. McDEVITT, ESQ.

A P P E A R A N C E S (Continued):

CRAVATH, SWAIN & MOORE  
Attorneys for Times Square  
Business Improvement District  
825 Eighth Avenue  
New York, New York 10019-7475  
BY: DAVID A. STOLL, ESQ.

PAUL A. CROTTY, ESQ.  
Corporation Counsel  
for the City of New York  
100 Church Street  
New York, New York 10007  
BY: ALBERT G. FREDERICKS, ESQ.

MELANIE MEYERS, ESQ.  
Attorney for the City of New York  
Department of City Planning,  
Zoning & Urban Design  
22 Reade Street  
New York, New York 10007-1216

Also Present:

RITA LEDUC



STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties hereto that all rights provided by the CPLR including the right to object to any question except as to the form or to move to strike any testimony at this examination before trial shall not be a bar or waiver to make such motion at, and is reserved for the trial of the action.

IT IS FURTHER STIPULATED AND AGREED by and between counsel for the respective parties hereto that this examination may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of the examination to counsel, shall not be deemed a waiver of the rights provided by Rule 3116 and Rule 3117 of the CPLR and shall be controlled thereby.

1  
2 MARILYN MAMMANO ,

3 residing at 131 East 39th Street, New  
4 York, New York 10016, having been duly  
5 sworn by the Notary Public, was examined  
6 and testified as follows:

7 EXAMINATION BY

8 MS. HAROULES:

9 Q. Good afternoon, Ms. Mammano. My  
10 name is Beth Haroules. I'm an attorney with the  
11 New York Civil Liberties Union. We represent  
12 the plaintiffs in the Hickerson action against  
13 the City of New York concerning the zoning  
14 resolution that the City passed last October.

15 I will be asking you questions  
16 primarily about the zoning resolution and how  
17 that zoning resolution impacts on the number of  
18 permissible sites for adult establishments in  
19 New York City. If there is anything I ask where  
20 you are not clear, please let me know on the  
21 record, and I will try to make sure that I  
22 adjust the question accordingly. Is that okay?

23 A. That is fine.

24 Q. Could you state your full name and  
25 address on the record please.

6

1 M. Mammano

2 A. My name is Marilyn Mammano. I'm the  
3 Director of Zoning and Urban Design with the New  
4 York City Department of City Planning.

5 My work address is 22 Reade Street,  
6 New York 10007. My home address is 131 East  
7 39th Street, New York 10016.

8 Q. How long have you held the position  
9 that you just described?

10 A. I've been the director of Zoning and  
11 Urban Design since 1991.

12 Q. Could you describe your employment  
13 history prior to that?

14 A. Prior to that I was a member -- on  
15 the City Planning Commission from 1987 to 19 --  
16 the end of 1989. And previous to that I was a  
17 member of the Department of City Planning in  
18 various positions, the most -- the closest to my  
19 services at the Commission, I was Director of  
20 Planning for Staten Island from 1981 to 1987.

21 Q. Could you describe your educational  
22 background briefly?

23 A. I have a Bachelor's degree in  
24 architecture and a Master's degree in City and  
25 Regional Planning from Pratt Institute.

Pages 7 -150 omitted

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1 M. Mammano

2 and strictly mathematical, strictly computer  
3 oriented, as we were dealing with blank raw  
4 space to determine this matter, these maps,  
5 Exhibit 7 to 11, there was no consideration for  
6 existing adult uses in that area?

7 A. No, that is not correct.

8 Q. There were?

9 A. Yes. Having done the capacity  
10 analysis, we then indicated that the capacity  
11 included what was to the best of our ability to  
12 calculate the existing users which could remain  
13 for each borough and for the City as a whole.  
14 That is what the numbers on the August 3rd memo  
15 represent for the proposal as it was presented  
16 to the Commission, and that was later updated to  
17 reflect that the chance that the City Planning  
18 Commission --

19 Q. I think you are misunderstanding my  
20 question. I mean on the map, if there was a big  
21 facility or a little facility, for that matter,  
22 in one of these zones which is now an adult  
23 permissible zone?

24 A. I understand your question now. No,  
25 the map indicates that legend that the exists

152

1 M. Mammano

2 adult establishments were not considered in the  
3 graphic representation of the map.

4 Q. So there was no attempt to take any  
5 of these, any of the businesses which are  
6 underlined, and draw 500-foot circles around  
7 them on the map?

8 A. That's correct.

9 Q. This only relates, is it a fair  
10 statement to say that this statute only relates  
11 to legal business?

12 A. These are all legal businesses as  
13 far as we are concerned. If it is an illegal  
14 business, it shouldn't be in operation.

15 Q. Is the City aware that there might  
16 be some adult businesses that are illegal?

17 A. I am sorry, I don't know what you  
18 mean by illegal.

19 Q. That there might be some businesses  
20 in New York that don't put them on a tax lot as  
21 a topless bar or theater or video store, or is  
22 the city not aware of that fact?

23 A. I'm sorry, I don't know how to  
24 answer that question because I don't know what  
25 you are asking me.

Pages 153-end omitted







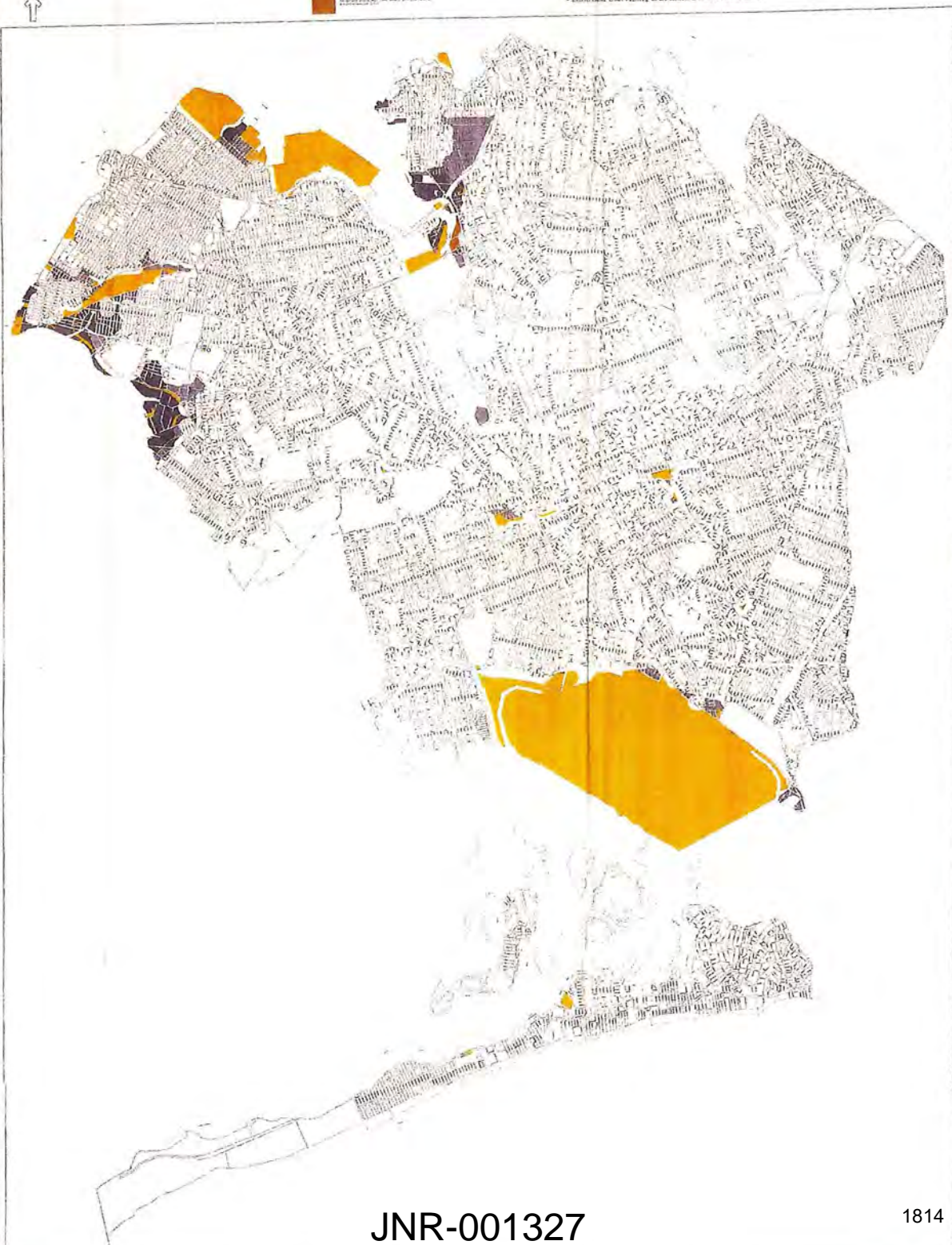




[illegible]

Continue to be Allowed under the Proposal\*  
and Encumbered Property within those Areas

## Queens

<sup>a</sup> Deductions from existing adult entertainment were not shown.

Department of City Planning  
Computer Information Services  
25 Beekman Street  
New York, N.Y. 10003

Source of Data: DOB Zoning File, March 1994  
DOB Zoning File, January 1995  
DOB DOB File, July 1995  
DCP Selected Public Facilities File, October 1992  
DCP Third Survey (School, House of Worship, Day Care  
Center and Adult Entertainment), October 1994  
NY State Education Dept. File, 1993-94 School Year  
Base Map: COGIS, Tax Lot Geography as of April 1990

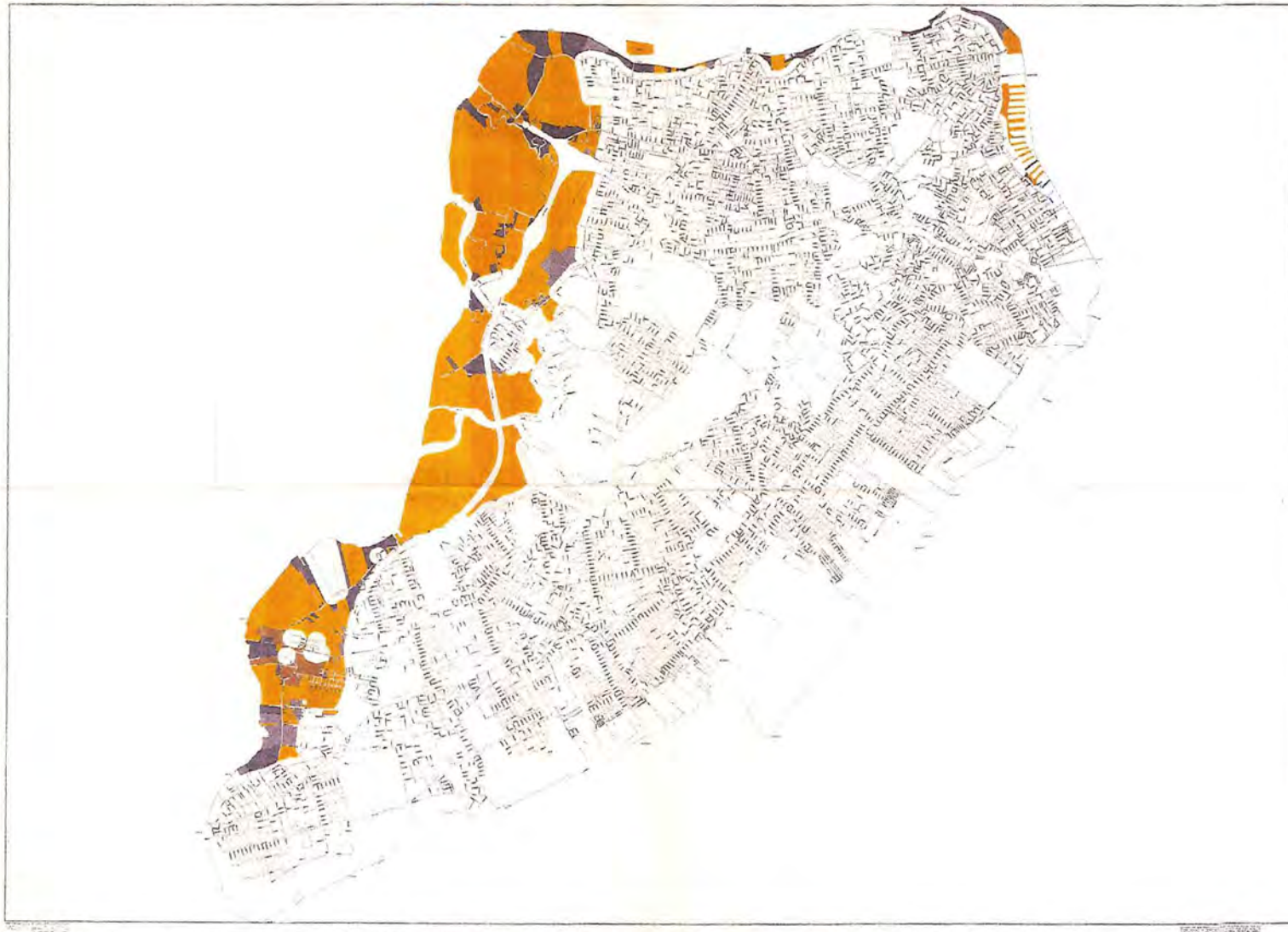
Scale: 1 inch = 5000 feet  
NOTE: Distances depicted are approximations



Areas where Adult Entertainment Uses would  
Continue to be Allowed under the Proposal\*  
and Encumbered Property within those Areas

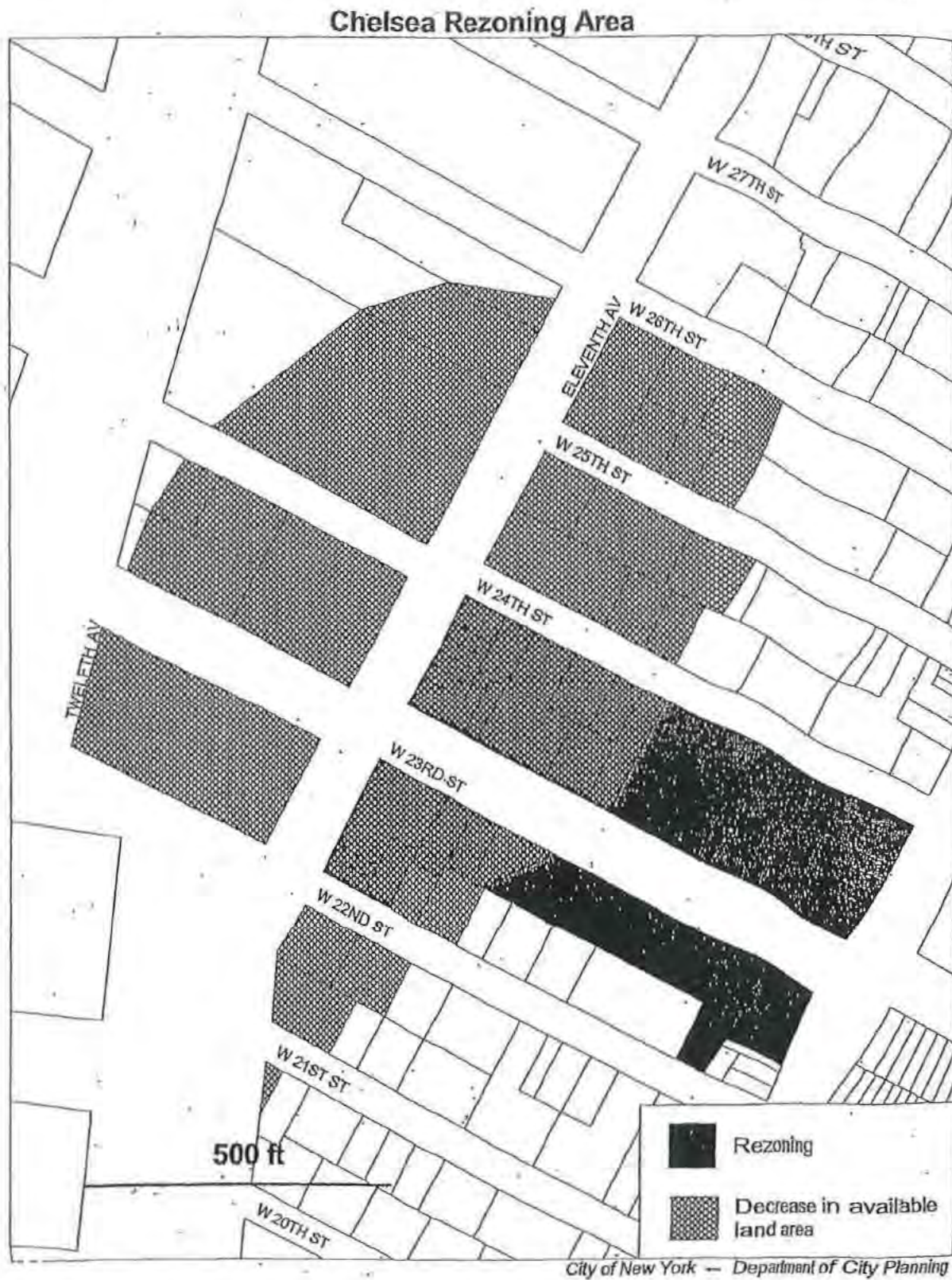
Staten Island

\* Restrictions from existing adult entertainment uses not shown

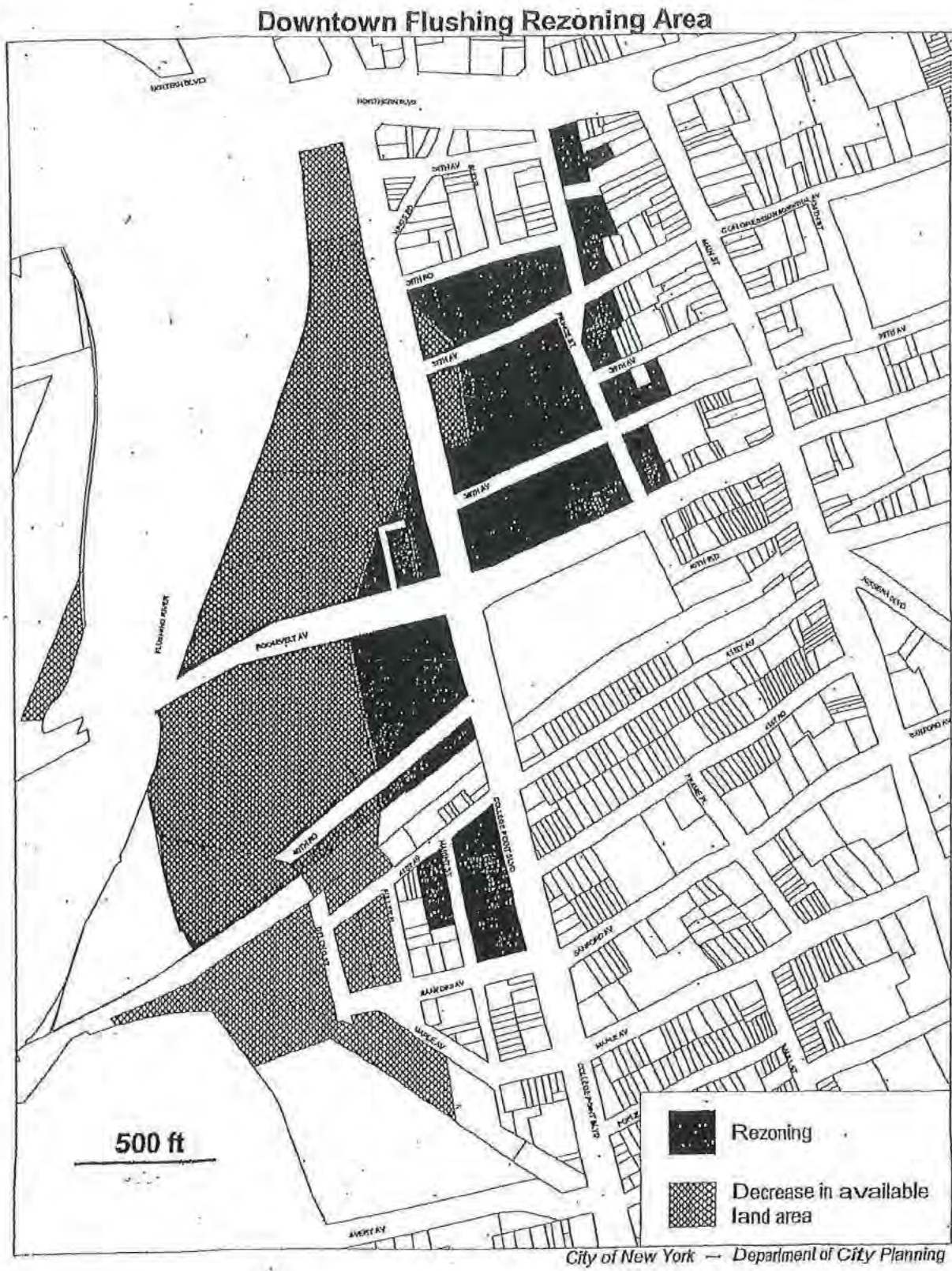


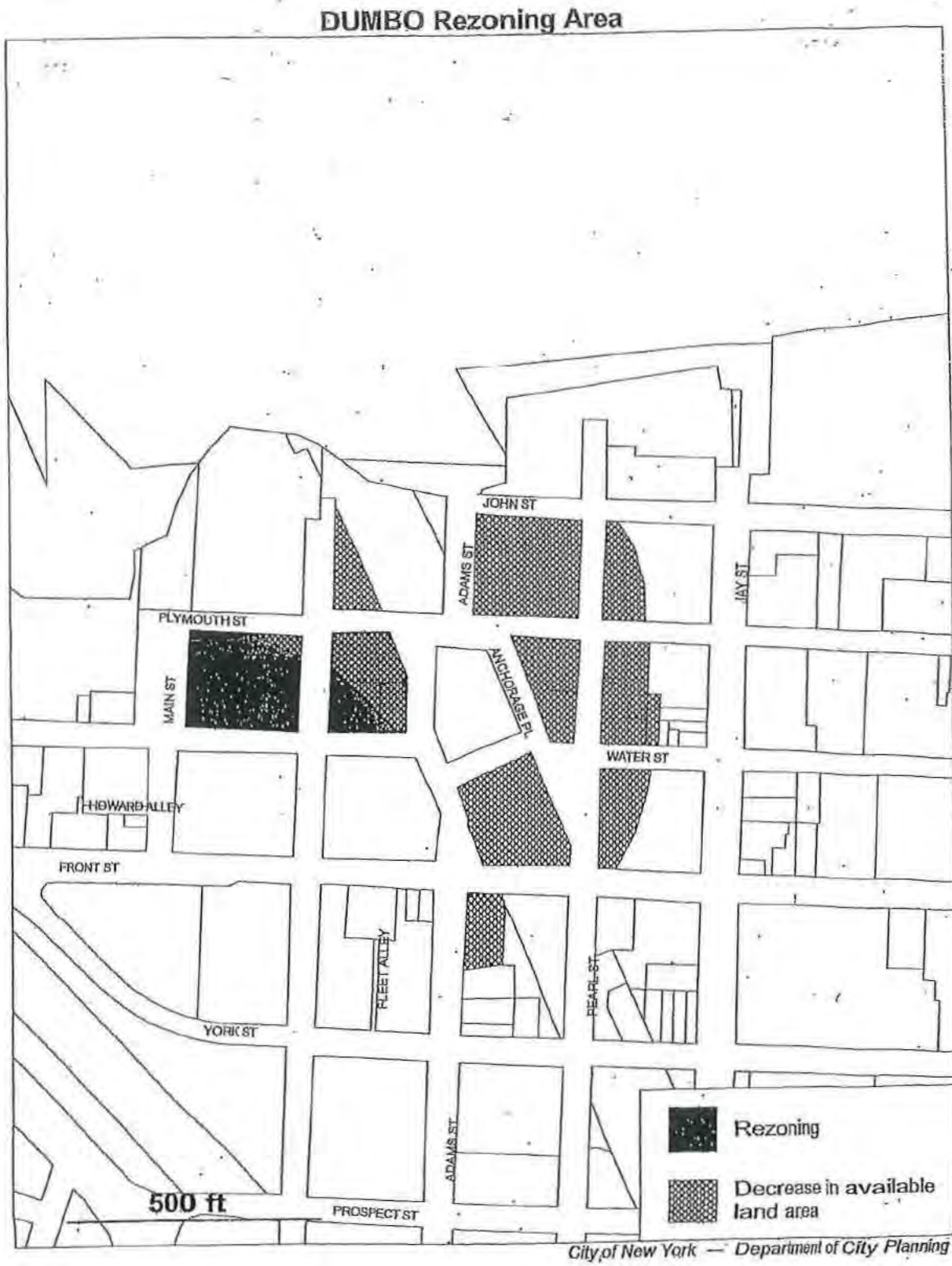
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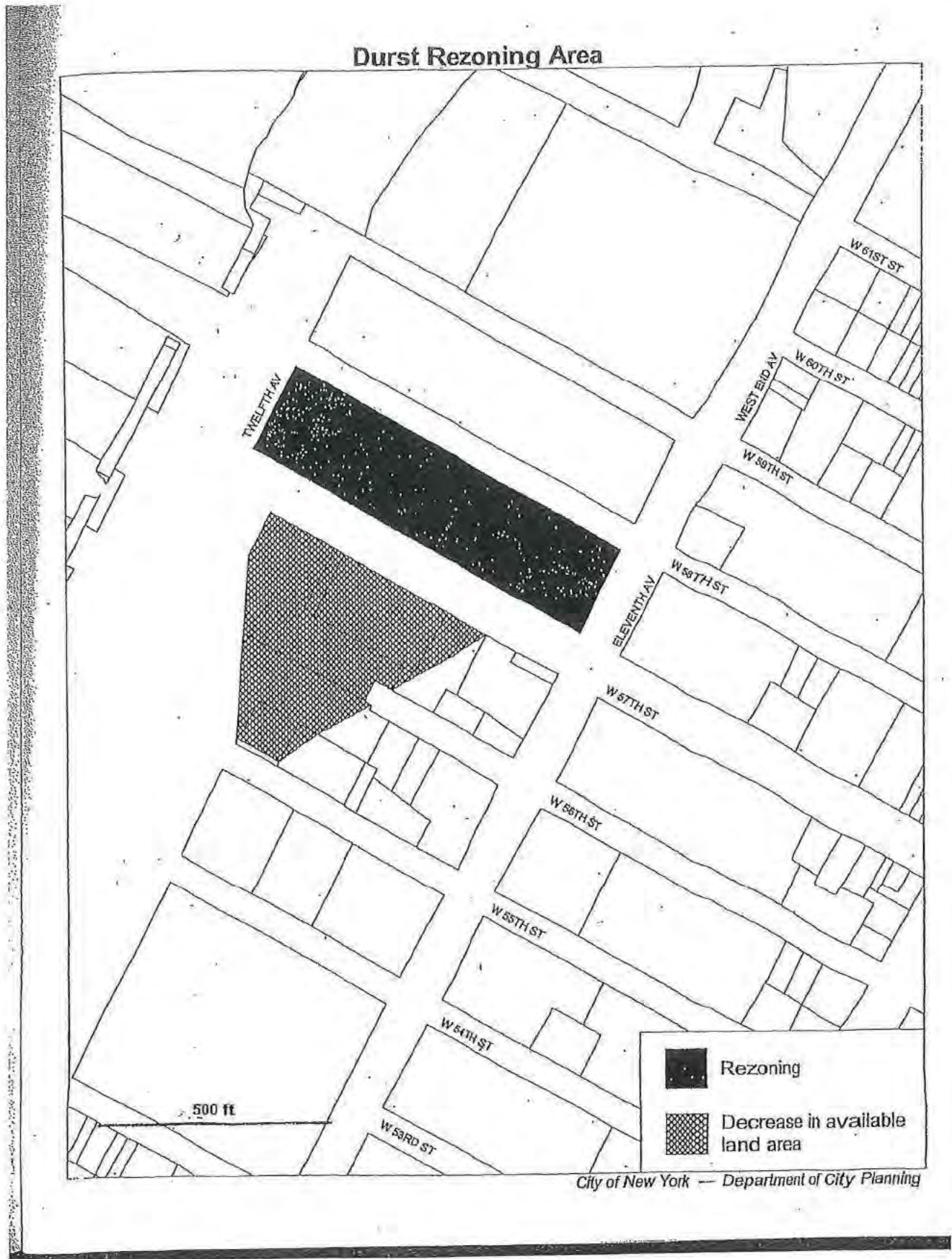
































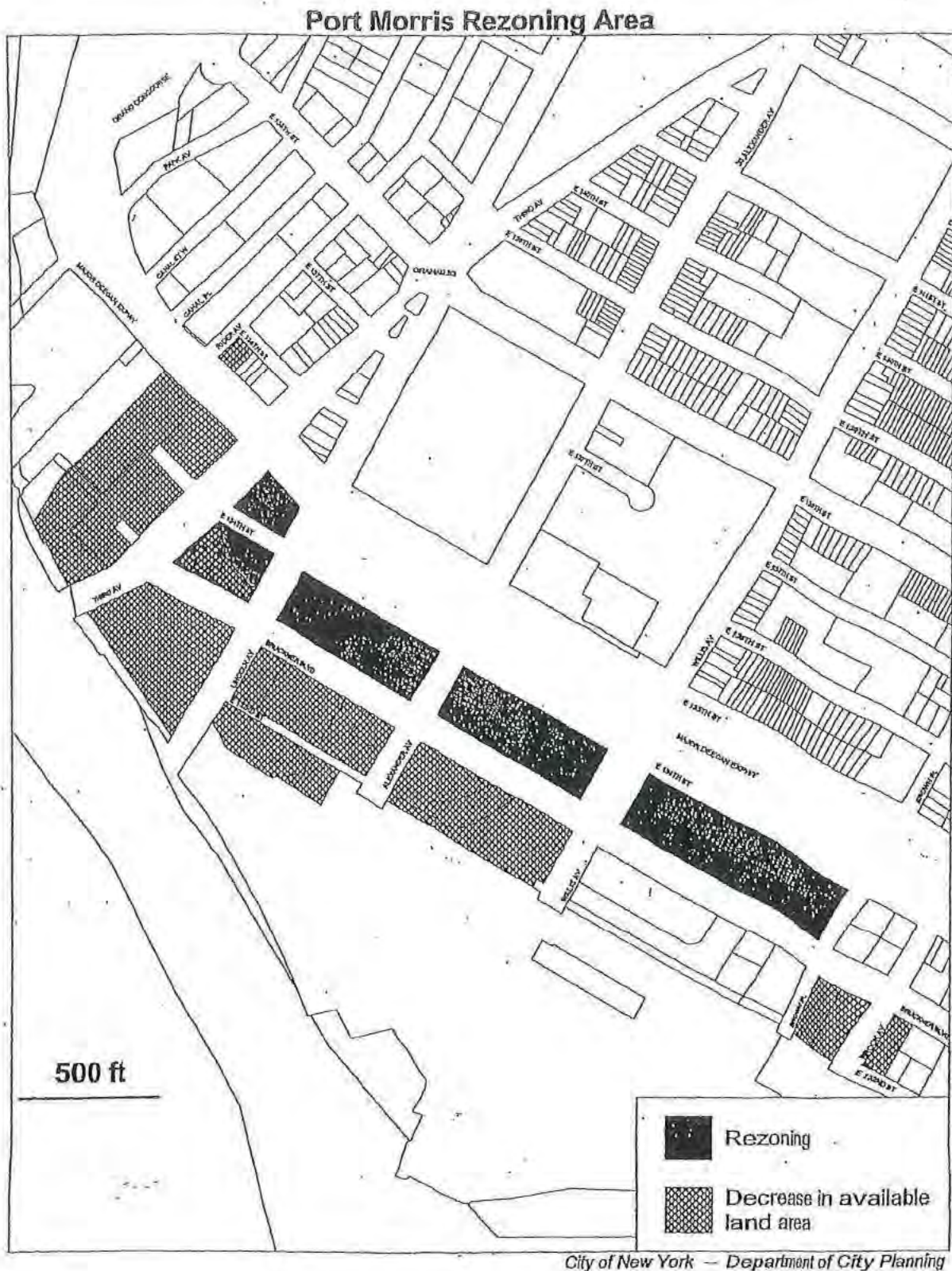




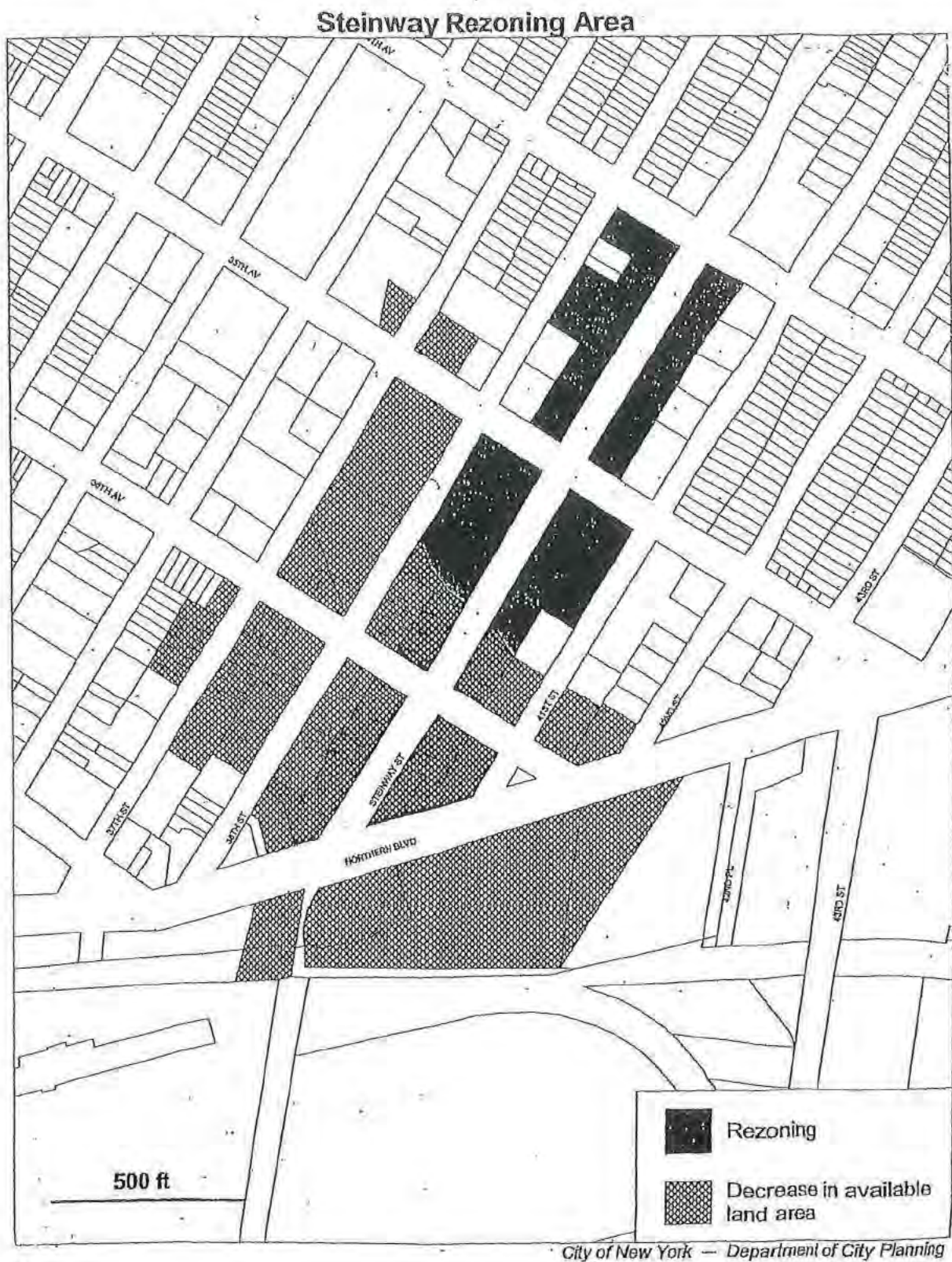


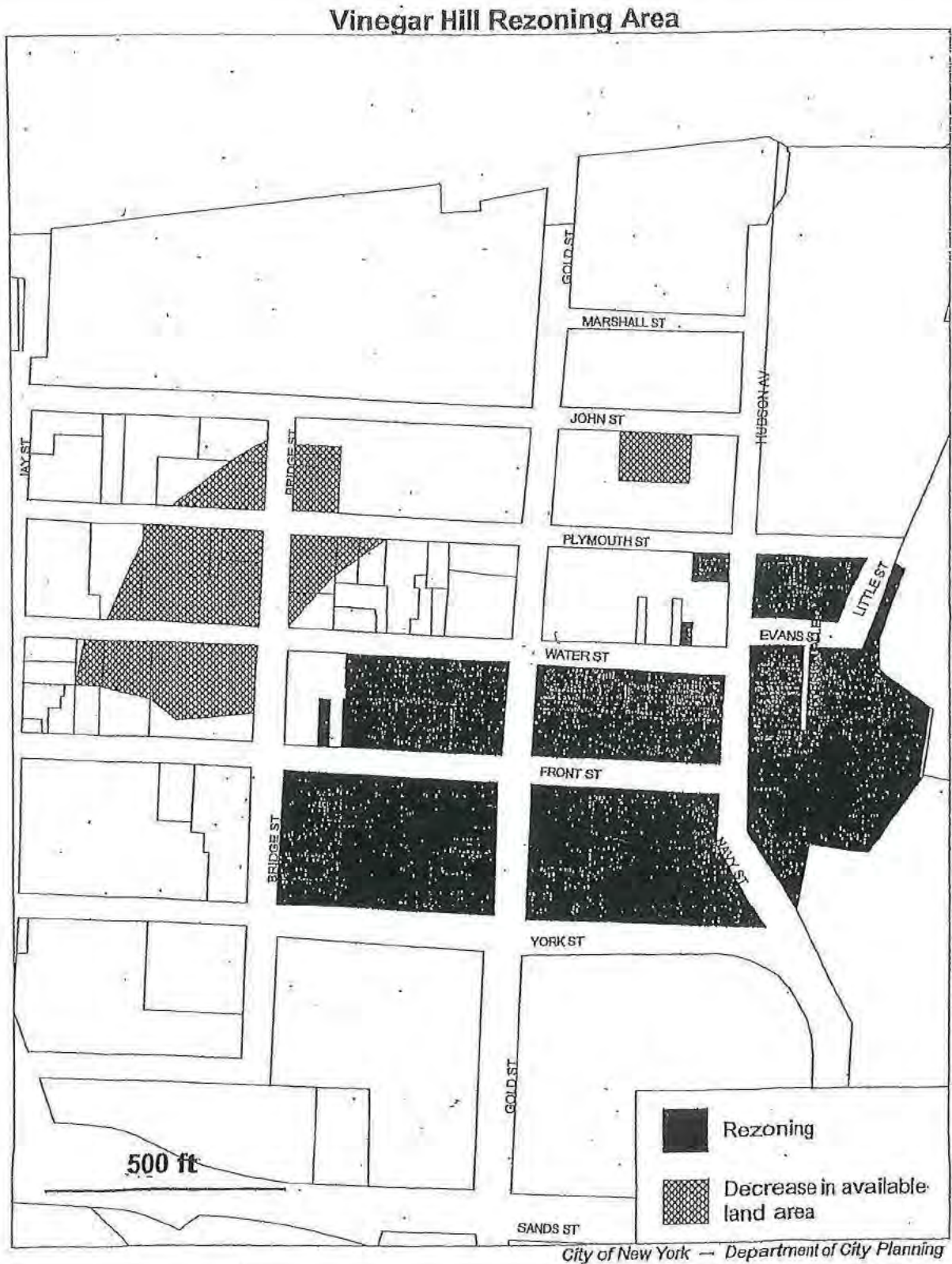




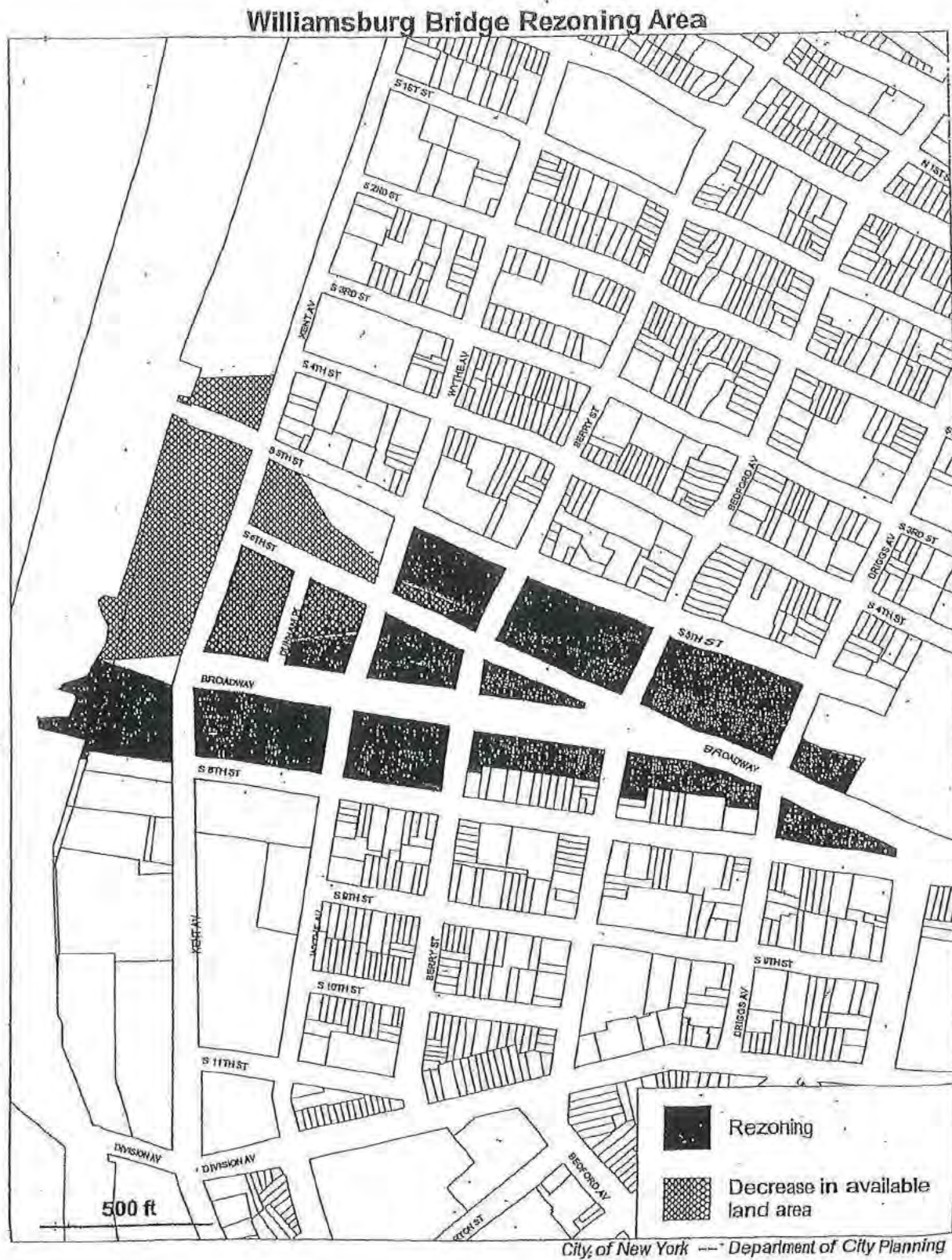












LITIGATION MANAGEMENT AGREEMENT

AGREEMENT made as of the 25<sup>th</sup> day of September, 2017, between and among the undersigned attorneys on behalf of the eating and drinking establishments enumerated on Schedule A hereto (hereafter "Plaintiffs"), and the Corporation Counsel of the City of New York, on behalf of the City of New York.

*WHEREAS*, in 2001 the City of New York ("City") adopted certain amendments to the Zoning Resolution of the City of New York, as amended, effective October 30, 2002 and set forth in Text Amendment N 010508 ZRY ("2001 Amendments"); and

*WHEREAS*, in 2002, the undersigned attorneys commenced the Federal Actions enumerated on Schedule B hereto, to declare the 2001 Amendments unconstitutional as they relate to eating and drinking establishments that regularly feature adult entertainment and enjoin their enforcement against eating and drinking establishments that regularly feature adult entertainment under the First Amendment to the United States Constitution ("Federal Actions"); and

*WHEREAS*, in 2002, multiple lawsuits (enumerated on Schedules C and D hereto) were commenced concurrently in the New York State Courts challenging the 2001 Amendments ("State Actions"); and

*WHEREAS*, prior to the adjudication of the Federal Actions on the merits, the 2001 Amendments were declared unconstitutional in the State Actions and their enforcement enjoined city-wide; and

*WHEREAS*, in light of the judgment and stays entered in the State Actions, the Federal Actions were administratively closed "with leave to petition to re-open for good cause shown"; and

*WHEREAS*, after closing the Federal Actions the Court indicated that it did not want to entertain re-opening the Federal Actions until there was a final resolution of all pending state court actions challenging the 2001 Amendments; and

*WHEREAS*, on June 6, 2017, the Court of Appeals of the State of New York issued its Opinion and Remittitur reversing the prior lower court judgments in the State Actions and upholding the 2001 Amendments ("June 6<sup>th</sup> Decision"), the effect of which is to allow enforcement of the 2001 Amendments; and

*WHEREAS*, a motion is *sub judice* in the New York Court of Appeals for reargument of a portion of the June 6<sup>th</sup> Decision ("Reargument Motion"); and

*WHEREAS*, the time to apply to the United States Supreme Court for any writ of certiorari will commence upon finality of the appeals to the New York Court of Appeals, including a ruling on the pending Reargument Motion; and

*WHEREAS*, all undersigned counsel have been engaged in ongoing discussions regarding how to proceed with the closed Federal Actions in light of the June 6<sup>th</sup> Decision, the potential enforcement of the 2001 Amendments by the City, and the Federal court's prior actions regarding re-opening the Federal Cases; and

*WHEREAS*, during these discussions, the City has refrained from enforcement of the 2001 Amendments, and Plaintiffs have similarly refrained from taking any action to revive the closed Federal Actions or to file new ones; and

*WHEREAS*, the undersigned attorneys for Plaintiffs have advised the Corporation Counsel that, but for this Litigation Management Agreement and the negotiations leading to its execution, they would

have immediately applied to the United States District Court to re-open the Federal Actions (other than Action No. 3 as set forth in Schedule B, which is moot), and/or filed new actions in Federal Court to declare the 2001 Amendments unconstitutional under the First Amendment to the United States Constitution, and sought temporary restraining orders and preliminary injunctions; and

*WHEREAS*, the undersigned attorneys and the Corporation Counsel have consulted with one another and have concluded that it is in the best interests of the parties and the public to enter into this agreement in order to provide for the orderly and efficient management of litigation and conclusive determination of claims;

*NOW, THEREFORE*, it is hereby agreed as follows:

1. The City of New York will continue to refrain from enforcing the 2001 Amendments in connection with the locations shown in Schedule A until 60 days after the District Court's determination of Plaintiffs' motions for preliminary injunctions against enforcement, upon the following terms and conditions:

A. The closed Federal Actions shall be re-opened and amended and supplemental complaints filed therein (or, alternatively, new actions shall have been commenced by the filing of new complaints) not later than 60 days after (a) December 11, 2017 (the expiration of the time provided by law for filing a petition to the Supreme Court of the United States for a Writ of Certiorari to review the New York Court of Appeals' June 6th Decision), if no certiorari petition is timely filed by a party listed in Schedule C ("a Schedule C Party" or collectively "the Schedule C Parties"), or (b) the final determination by the Supreme Court of the United States of any petition(s) for a Writ(s) of Certiorari filed by a Schedule C Party, (or, alternatively, in the

event certiorari is granted, within 60 days of the entry of the final Judgment of the Supreme Court), whichever is the last to occur.

B. Upon the service of Plaintiffs' amended and/or supplemental complaints in the re-opened Federal Actions (or, alternatively, Plaintiffs' new complaints filed in new actions), the parties shall consult with each other in good faith concerning (a) the possible extension of the time to move for preliminary injunction(s) established hereunder, (b) the possible consolidation of dispositive motions or the trial(s) on the merits of the actions with the hearing(s) on the motions for preliminary injunctions under F.R.Civ.P. 65(a)(2), and (c) the possible extension of this agreement to refrain from enforcement. Nothing set forth herein is intended or shall be deemed or construed to obligate the City or Plaintiffs to agree to any of the foregoing.

C. Absent the parties' agreement to the contrary, motions for preliminary injunctions shall be filed within 30 days of the service of the amended and supplemental complaints (or alternatively the filing of new complaints in a new action).

D. The City of New York shall file its responses to the amended and supplemental complaints (or new complaints, as the case may be) within 60 days of service upon it.

E. Notwithstanding the time frames set forth subsections A-C, the City may, at any time upon 75 days written notice to undersigned counsel for Plaintiffs, require that Plaintiffs take immediate steps to obtain judicial relief from the City's enforcement of the 2001 Amendments.

2. The City of New York will continue to refrain from enforcing the 2001 Amendments in connection with the locations shown in Schedule C until the later of: (a) December 11, 2017 (the



expiration of the time for the Schedule C Parties to file a petition for writ of certiorari); or (b) if any such petition is filed, 30 days after the denial of the petition or entry of the final judgment of the Supreme Court, whichever is longer.

3. The City shall not oppose Plaintiffs' motions, if any, for: (a) re-opening of the closed Federal Actions upon application therefore (other than Action No. 3 enumerated in Schedule B hereto, for the reasons set forth above), and/or (b) consolidation of the re-opened Federal Actions for any or all purposes.

4. Nothing set forth herein is intended or shall be deemed or construed to preclude any application to the Federal Court for other, further and different relief not inconsistent herewith.

5. Nothing in this agreement prevents the City from enforcing the provisions of City Zoning Resolution Text Amendment N 950384 ZRY in connection with the locations shown in Schedule A.

6. Fed. R. Civ. Proc. 6 shall apply in computing any time period specified in this Agreement.

7. The undersigned attorneys represent that they are each and all authorized to enter into this Agreement on behalf of their respective clients (including the City of New York); that this Agreement shall be binding upon and inure to the benefit of each and all of such attorneys and clients; and that this Agreement is enforceable against each of the parties hereto.

8. This Agreement is the product of negotiation between the undersigned attorneys. Any ambiguity shall not be construed against any party.

9. In the event any provision of this Agreement is determined by any Court to be unenforceable for any reason, (a) any such provision shall be reformed to the extent necessary to render



it enforceable, and (b) in any event, the balance of the Agreement shall be nonetheless enforceable in accordance with the remaining terms.

10. This Agreement integrates all understandings and agreements of the parties hereto with respect to the subject matter hereof. Any prior understanding or agreement, written or oral, is hereby merged herein and shall not survive execution of this Agreement.

11. This Agreement may be amended or modified only in a writing (including e-mail) signed by all of the parties hereto.

12. There shall be no oral waivers of this Agreement. Any waiver shall be in writing (including e-mail) signed by the party to be charged or confirmed in a transcribed record of a judicial proceeding.

13. This Agreement may be executed in counterpart copies, all of which, taken together, shall constitute one and the same instrument.

14. Facsimile signatures on behalf of any of the undersigned shall be deemed original for all purposes.

15. Neither party will rely on this agreement to suggest that any party has made any admission, concession, or other waiver of any kind with respect to the merits of Plaintiffs' claims.

WHEREFORE, the undersigned have executed this Agreement at New York, New York, as of the date first set forth above.

WESTON GARROU & MOONEY  
Attorneys for Sapphire

By: (John H. Weston)

SILVER & SILVER  
Attorneys for Lace and Satin Dolls

By: Daniel A. Silver  
Daniel A. Silver

HON. ZACHARY W. CARTER  
Corporation Counsel of the City of New York

By: Mark Muscadenheim

ZANE and RUDOFISKY  
Attorneys for New York Dolls, Private Eyes  
VIP, and Vixen

By: Edward S. Rudofsky  
Edward S. Rudofsky

SCHEDULE A

- 1) Sapphire, 333 E 60th St, New York, NY 10022
- 2) Lace, 725 7th Ave, New York, NY 10019
- 3) Satin Dolls (formerly Lace II), 689 8<sup>th</sup> Ave, New York, NY 10036
- 4) NY Dolls, 59 Murray St, New York, NY 10007
- 5) Private Eyes, 302 W 45<sup>th</sup> St, New York, NY 10036
- 6) VIP, 20 W 20th St #1, New York, NY 10011
- 7) Vixen, 60-07 Metropolitan Ave, Ridgewood, NY 11385

SCHEDULE B

- 1) MLB Enterprises Corp. v. The City of New York, et al., SDNY Case No. 02-cv-04431-WHP
- 2) 59 Murray Corp., et ano. v. The City of New York, et al., SDNY Case No. 02-cv-04432-WHP
- 3) Pulse Nite Club, Inc. et al. v. The City of New York, et al., SDNY Case No. 02-cv-06193-WHP
- 4) Club at 60<sup>th</sup> Street, Inc. et ano. v. The City of New York, SDNY Case No. 02-cv-08333-WHP

SCHEDULE C

- 1) Ten's Cabaret, Inc. v. City of New York, Supreme Court, New York County; Index No. 121197/2002
- 2) Pussycat Lounge, Inc. v. Bloomberg, Supreme Court, New York County, Index No. 122740/2002

SCHEDULE D

- 1) For the People Theatres of N.Y., Inc. v. et al. v. City of New York, et al., New York County Index No. 121080/2002